UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Heather Gladys Marie H. v. Commissioner of Social Security Administration

No. CV-24-02933-PHX-SHD (D. Ariz. Mar. 31, 2026) · No. No. CV-24-02933-PHX-SHD · Decided March 31, 2026

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF ARIZONA 8 9 Heather Gladys Marie H., No. CV-24-02933-PHX-SHD 10 Plaintiff, ORDER 11 v. 12 Commissioner of Social Security Administration, 13 Defendant. 14 15 Claimant Heather Gladys Marie H. ("Claimant")1 seeks review of the Social 16 Security Administration Commissioner's ("SSA" or "Commissioner") final decision 17 denying her disability insurance benefits.

For the reasons set forth below, the 18 Administrative Law Judge's ("ALJ") decision is vacated and remanded for further 19 administrative proceedings. 20 I. BACKGROUND 21 A. Factual Overview 22 Claimant was 50 years old on her alleged disability onset date of May 25, 2021. 23 (Administrative Record ("AR") 15.) She has at least a high school education and her past 24 relevant work is skilled.

(AR 27, 28.) Claimant filed an application for disability insurance 25 benefits on August 13, 2021, under Title II. (AR 15.) The claim was initially denied on 26 March 3, 2022, and again upon reconsideration on December 19, 2022. (Id.)

After a 27 hearing held on October 19, 2023, the ALJ denied Claimant's claim on December 8, 2023. 28 1 As a matter of practice, Claimant is referred to as such and, at most, by her first name and last initial to protect her privacy. 1 (AR 29.)

The Appeals Council denied Claimant's request for review on September 4, 2 2024. (AR 1.) Claimant then appealed to this Court. (Doc. 1.) 3 B. The SSA's Five-Step Evaluation Process 4 To qualify for Social Security Disability Insurance benefits, a claimant must show 5 that she "is under a disability." 42 U.S.C. § 423(a)(1)(E).

To be "under a disability," the 6 claimant must be unable to engage in "substantial gainful activity" due to "any medically 7 determinable physical or mental impairment." Id. § 423(d)(1). The impairment must be 8 of such severity that the claimant cannot do her previous work or any other substantial 9 gainful work within the national economy. Id. § 423(d)(2)(A).

The SSA has created a 10 five-step sequential evaluation process for determining whether an individual is disabled. 11 See 20 C.F.R. § 404.1520(a)(1). The steps are followed in order, and

each step is 12 potentially dispositive. See id. § 404.1520(a)(4). 13 At Step One, the ALJ determines whether the claimant is engaging in "substantial 14 gainful activity." Id. § 404.1520(a)(4)(i). "Substantial gainful activity" is work activity 15 that is (1) "substantial," i.e., doing "significant physical or mental activities"; and (2) 16 "gainful," i.e., usually done "for pay or profit." 20 C.F.R. § 416.972(a)–(b).

If the claimant 17 is engaging in substantial gainful work activity, the ALJ will find the claimant is not 18 disabled. Id. § 404.1520(a)(4)(i). 19 At Step Two, the ALJ determines whether the claimant has "a severe medically 20 determinable physical or mental impairment" or severe "combination of impairments." Id. 21 § 404.1520(a)(4)(ii).

To be "severe," the claimant's impairment must "significantly limit" 22 the claimant's "physical or mental ability to do basic work activities." Id. § 404.1520(c). 23 If the claimant does not have a severe impairment or combination of impairments, the ALJ 24 will find the claimant is not disabled. Id. § 404.1520(a)(4)(ii). 25 At Step Three, the ALJ determines whether the claimant's impairment(s) "meets or 26 equals" an impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Part 404.

Id. 27 § 404.1520(a)(4)(iii). If so, the ALJ will find the claimant is disabled, but if not, the ALJ 28 must assess the claimant's "residual functional capacity" ("RFC") before proceeding to 1 Step Four. Id. §§ 404.1520(a)(4)(iii), (e).

The claimant's RFC is her ability perform 2 physical and mental work activities "despite [her] limitations," based on all relevant 3 evidence in the case record. Id. § 404.1545(a)(1). To determine RFC, the ALJ must 4 consider all the claimant's impairments, including those that are not "severe," and any 5 related symptoms that "affect what [the claimant] can do in a work setting." Id. 6 §§ 404.1545(a)(1)–(2).

7 At Step Four, the ALJ determines whether the claimant has the RFC to perform the 8 physical and mental demands of "[her] past relevant work." Id. §§ 404.1520(a)(4)(iv), (e). 9 "Past relevant work" is work the claimant has "done within the past five years that was 10 substantial gainful activity." Id. § 404.1560(b)(1). If the claimant has the RFC to perform 11 her past relevant work, the ALJ will find the claimant is not disabled.

Id. 12 § 404.1520(a)(4)(iv). If the claimant cannot perform her past relevant work, the ALJ will 13 proceed to Step Five in the sequential evaluation process. 14 At Step Five, the last in the sequence, the ALJ considers whether the claimant "can 15 make an adjustment to other work," considering her RFC, age, education, and work 16 experience. Id. § 404.1520(a)(v).

If so, the ALJ will find the claimant not disabled. Id. If 17 the claimant cannot make this adjustment, the ALJ will find the opposite. Id. 18 C. The ALJ's Application of the Factors 19 Here, at Step One, the ALJ concluded that Claimant had not engaged in substantial 20 gainful

activity since the alleged disability onset date of May 25, 2021. (AR 17.) 21 At Step Two, the ALJ determined that Claimant had severe impairments, including 22 remote history of cirrhosis of the liver with ascites (without known symptoms), idiopathic 23 epilepsy, Guillain Barré Syndrome, migraines and small vessel ischemic disease, mild 24 neurocognitive disorder, depression, and obesity.

(Id.) 25 At Step Three, the ALJ found that Claimant did not have an impairment or 26 combination of impairments that met or medically equaled the severity of one of the listed 27 impairments in Appendix 1 to Subpart P of 20 C.F.R. § 404. (AR 18.) With respect to the 28 mental impairment, the ALJ analyzed the four "paragraph B" criteria and found that 1 Claimant had mild limitations in: (1) understanding, remembering or applying information; 2 and (2) interacting with others; and moderate limitations in: (3) concentrating, persisting 3 or maintaining pace; and (4) adapting or managing oneself.

The ALJ also found that the 4 medical evidence of record did not establish both ongoing medical treatment, mental health 5 therapy, psychosocial supports, or highly structured settings that diminished the 6 impairment symptoms and signs, thus the record failed to establish the presence of 7 "paragraph c" criteria. (AR 19–21.) 8 The ALJ then found that Claimant had the following RFC: 9 [Claimant can] perform light work as defined in 20 CFR 404.1567(b) except 10 she should never climb ropes, ladders or scaffolds; could frequently climb ramps and stairs, balance, stoop, kneel, crouch, and crawl; could frequently 11 reach overhead, feel, finger, and handle bilaterally; should avoid 12 concentrated exposure to loud noise and all exposure to unprotected heights and moving and dangerous machinery; and was able to understand, 13 remember and carry out simple instructions and tasks.

14 (AR 21.) 15 At Step Four, the ALJ found that Claimant was not capable of performing any past 16 relevant work. (AR 27.) At Step Five, based on the RFC formulation and the testimony 17 of the vocational expert ("VE"), the ALJ found that there are jobs that exist in significant 18 numbers in the national economy that claimant can perform considering her age, education, 19 work experience, and RFC, such as "Marker," "Housekeeper/Cleaner," and "Sales 20 Attendant." (AR 28.)

Accordingly, the ALJ concluded that Claimant was not disabled as 21 defined in the Social Security Act from the alleged onset date through December 8, 2023. 22 (AR 29.) 23 II. LEGAL STANDARD 24 This Court may not set aside a final denial of disability benefits unless the ALJ's 25 decision is "based on legal error or not supported by substantial evidence in the record." 26 Revels v. Berryhill, 874 F.3d 648, 654 (9th Cir.

2017) (quoting Benton ex rel. Benton v. 27 Barnhart, 331 F.3d 1030, 1035 (9th Cir. 2003)). Substantial evidence refers to "such 28 relevant evidence as a reasonable mind might accept as

adequate to support a conclusion." 1 Id. (quoting Desrosiers v. Sec'y of Health & Human Servs., 846 F.2d 573, 576 (9th Cir. 2 1988)).

The Court, in its review, must consider the record in its entirety, "weighing both 3 the evidence that supports and the evidence that detracts from the [ALJ's] conclusion." Id. 4 (quoting Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2007)). 5 The ALJ—not this Court—is responsible for resolving ambiguities, resolving 6 conflicts in medical testimony, determining credibility, and drawing logical inferences 7 from the medical record.

See Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995) 8 (citing Magallanes v. Bowen, 881 F.2d 747, 750 (9th Cir. 1989)); Gallant v. Heckler, 753 9 F.2d 1450, 1453 (9th Cir. 1984). Therefore, when the evidence of record could result in 10 more than one rational interpretation, "the ALJ's decision should be upheld." Orn v. 11 Astrue, 495 F.3d 625, 630 (9th Cir.

2007); Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 12 1190, 1198 (9th Cir. 2004) ("When the evidence before the ALJ is subject to more than 13 one rational interpretation, [the Court] must defer to the ALJ's conclusion."). Further, this 14 Court may only review the reasons the ALJ provides in the disability determination; it 15 "may not affirm the ALJ on a ground upon which he did not rely." Garrison, 759 F.3d at 16 1010.

Finally, only those issues raised by the party challenging the decision are reviewed. 17 See Lewis v. Apfel, 236 F.3d 503, 517 n.13 (9th Cir. 2001). 18 III. DISCUSSION 19 Claimant frames her arguments on appeal as follows: (1) the RFC does not 20 adequately reflect Claimant's limitations based upon the medical opinion evidence of 21 record; (2) the RFC does not account for Claimant's testimony regarding her disabling 22 symptoms; and (3) the ALJ failed to present a complete hypothetical question to the VE.

23 (Doc. 13 at 2.) In reality, Claimant challenges the ALJ's decisions to discount the opinions 24 of two medical professionals and discount her symptoms testimony. These challenges will 25 be addressed in turn.2 26 2 Claimant's assertion that the ALJ failed to give a complete hypothetical question to the VE is based entirely on her other arguments, and thus need not be separately analyzed.

27 See Stubbs-Danielson v. Astrue, 539 F.3d 1169, 1175–76 (9th Cir. 2008) (declining to substantively address the claimant's argument that "the ALJ's hypothetical was 28 incomplete" because the claimant "simply restate[d] her argument that the ALJ's RFC finding did not account for all her limitations because the ALJ improperly discounted her 1 A. Medical Testimony 2 An ALJ must evaluate every medical source based on several factors, the "most 3 important" of which are "supportability" and "consistency." Woods v. Kijakazi, 32 F.4th 4 785, 791 (9th Cir.

2022) (citations omitted). "Supportability means the extent to which a 5 medical source supports the medical opinion by explaining the relevant... objective 6 medical evidence," and consistency

"means the extent to which a medical opinion is 7 consistent... with the evidence from other medical sources and nonmedical sources in the 8 claim." Id. at 791–92 (alterations in original) (quotation marks omitted).

An ALJ "must 9 articulate... how persuasive [he or she] finds all of the medical opinions from each doctor 10 or other source and explain how [he or she] considered the supportability and consistency 11 factors in reaching these findings." Id. at 792 (citation modified).

Under the current 12 regulations, "the decision to discredit any medical opinion[] must simply be supported by 13 substantial evidence." Id. at 787. 14 In this case, the ALJ evaluated evidence from six different doctors and, as relevant 15 here, found Dr. Keith Cunningham, M.D.'s opinion "only partially persuasive" and Dr. 16 Maryanne Belton, Psy.D.'s opinion "unpersuasive." (AR 27.)

Claimant challenges the 17 ALJ's findings concerning Dr. Cunningham and Dr. Belton. 18 1. Dr. Cunningham's Opinion 19 Dr. Cunningham met with Claimant on February 10, 2022, for purposes of 20 performing a "physical consultative examination." (AR 27; see also AR 1428–35.)

As 21 relevant here, Dr. Cunningham assessed Claimant as having "Guillain-Barre syndrome 22 with residual sensory and gait deficits." (AR 1430.) He also opined Claimant could never 23 engage in "Kneeling" or "crawling," and could only occasionally engage in "Reaching," 24 "Handling," "Fingering," and "Feeling," but left blank the portion of the form that asked, 25 "On which of your findings have you based these conclusions?" (AR 1433.)

26 The ALJ found that Dr. Cunningham's opinion was "partially persuasive." (AR 27 27.) Regarding the supportability factor, the ALJ found that the opinion was "generally 28 testimony and the testimony of medical experts"). 1 supported by a physical examination during the consultative examination." (Id.) With 2 respect to the consistency factor, however, the ALJ found that Dr. Cunningham's opinions 3 regarding "gait issues were not supported by the medical evidence of record as a whole" 4 and "there was no basis in the record to prohibit crawling or kneeling, and the manipulative 5 limitations were too restrictive." (AR 27).

The ALJ further noted that another doctor— 6 whose opinion the ALJ found "persuasive," (AR 26)—"also found that the limitations of 7 Dr. Cunningham were overly restrictive." (AR 27 (citing AR 59 (stating that "MSS is 8 overly restrictive for PE findings, specifically the Postural & manipulative limitations.")).) 9 Claimant argues that the ALJ erred in discounting Dr. Cunningham's opinion by 10 "substitut[ing] his opinion for that of a medical provider" and by disregarding Dr. 11 Cunningham's "examination findings." (Doc.

13 at 13.) She further argues that Dr. 12 Cunningham's "examination contains supportive findings that justify the limitations that 13 the ALJ declined to accept," and Dr. Cunninghman's "clinical findings in the opinion 14 support his conclusions." (Id. at 14.) Claimant's arguments focus exclusively on the 15 supportability factor. 16 But the ALJ partially discounted Dr. Cunningham's

opinion based on its lack of 17 consistency with the medical record—not based on the lack of supportability.

(AR 27.) 18 Because Claimant does not argue that the ALJ erred in finding that Dr. Cunningham's 19 opinion was not consistent with the medical record as a whole, such an argument cannot 20 be manufactured for her on appeal. See Indep. Towers of Wash. v. Washington, 350 F.3d 21 925, 929 (9th Cir. 2003) ("Our circuit has repeatedly admonished that we cannot 22 'manufacture arguments for an appellant' and therefore we will not consider any claims 23 that were not actually argued in appellant's opening brief." (internal quotation marks 24 omitted)); see also Lewis, 236 F.3d at 517 n.13 (declining to address argument that "was 25 not raised by [the claimant] on appeal"); see also Carmickle v. Comm'r, Soc.

Sec. Admin, 26 533 F.3 1155, 1161 n.2 (9th Cir. 2008) (declining to address a finding by an ALJ because 27 the claimant "failed to argue this issue with any specificity in his briefing"); cf. Bray v. 28 Astrue, 554 F.3d 1219, 1226 n.7 (9th Cir. 2009) ("This argument, however, was not made 1 in [appellant's] opening brief; thus, we deem it waived.").

Because Claimant did not 2 challenge the ALJ's consistency finding, her argument concerning Dr. Cunningham's 3 opinion fails. 4 2. Dr. Belton's Opinion 5 Dr. Belton evaluated Claimant on January 28, 2022, performing a "psychological 6 consultative examination." (AR 27.) Dr. Belton "deferred an opinion that any limitations 7 existed but wrote that memory and recall skills were impaired, sustaining attention to novel 8 tasks would be difficult, she would require step-by-step instructions, and she would be 9 challenged by unpredictable work environments, and needed assistance in managing 10 money." (Id. (citing AR 1419–27).)

In her report, Dr. Belton noted that "[t]here was 11 evidence for discrepancy across indices," (AR 1422), and indicated that her opinions on 12 Claimant's limitations would be "DEFERRED" because she "struggled to determine 13 whether [Claimant] might experience a return to cognitive capabilities after completion of 14 current interventions and treatment services," (AR 1425), but then set forth limitations 15 anyway, (AR 1425–26).

16 The ALJ found Dr. Belton's opinion "unpersuasive," finding it to be both 17 unsupported and inconsistent with the record. (AR 27.) Specifically, the ALJ noted that 18 the opinion was "poorly supported as it was based upon test results that Dr. Belton found 19 unreliable," stated that it was inconsistent because although it stated "no limitations could 20 be provided, it went on to opine that the claimant was unable to manage benefits," and 21 determined it was "inconsistent with the claimant's activities of daily living." (Id.)

22 Claimant argues that the ALJ erred with respect to both the supportability and consistency 23 findings. (Doc. 13 at 14–16.) 24 a. Supportability 25 Claimant argues that the ALJ erred in its supportability finding because Dr. Belton 26 did not rely solely on test results she found

unreliable, and instead “indicated that her 27 diagnostic impression was based on the clinical interview, review records [sic], and 28 observations, not simply on test data.” (Doc.

13 at 14–15.) In support of this assertion, 1 Claimant cites AR 1425. (Id.). 2 Claimant’s argument fails because the record does not support her factual assertion 3 that Dr. Belton considered anything other than the unreliable test results in formulating the 4 limitations. Rather than support Claimant’s position, AR 1425 establishes that Dr. Belton 5 relied solely on the test results, referring only to Claimant’s “scores” as justification for the 6 limitations identified on that page.

(AR 1425.) Likewise, the limitations on the following 7 page reflect that Dr. Belton relied on “test scores” and her “testing profile.” (AR 1426.) 8 b. Consistency 9 Claimant first argues that the ALJ erred in its consistency analysis because the ALJ 10 failed to evaluate the opinion of another doctor who—like Dr. Belton—found that Claimant 11 could understand and remember one to two step instructions.

(Doc. 13 at 15.) Specifically, 12 Claimant argues that it was error for the ALJ to not consider the consistency of Dr. Belton’s 13 opinion with “the opinion of the State agency physician, Dr. Zeuss... [who] concluded 14 that [Claimant] could understand and remember one to two step instructions, a limitation 15 that the ALJ did not adopt.” (Id.)

In support of her argument, Claimant cites a case in 16 which the Eastern District of Washington concluded that it was error for an ALJ to fail to 17 evaluate an opinion’s consistency with two other medical opinions that the ALJ also 18 rejected as inconsistent with the overall medical record. See Kevin H. v. Kijakazi, 2021 19 WL 4221612, at *5 (E.D. Wash. 2021) (“Under the new regulations, it was incumbent upon 20 the ALJ to consider consistency, or lack thereof, between the medical opinions when 21 considering the persuasiveness of Dr. Metoyer, Dr. Kester, and Dr. Gilbert's opinions.”).

22 Although neither party identifies binding precedent from the Ninth Circuit on this 23 issue, Kevin H. is persuasive. The Ninth Circuit has made clear that in evaluating the 24 consistency factor, an ALJ must evaluate whether the “medical opinion is 25 ‘consistent... with the evidence from other medical sources and nonmedical sources in 26 the claim.’” Woods, 32 F.4th at 792 (quoting 20 C.F.R. § 404.1520c(c)(2)) (emphasis 27 added).

Kevin H. is consistent with this requirement that an ALJ consider consistency with 28 respect to the record as a whole—including medical and non-medical evidence. Here the 1 ALJ found Dr. Belton’s opinion inconsistent with the non-medical evidence concerning 2 Claimant’s activities of daily living, but did not address Dr. Zeuss’s opinion—or any 3 “evidence from other medical sources”—in the consistency analysis.

(AR 27.) This failure 4 runs afoul of the principle set forth in Kevin H., and more importantly, the requirements 5 set forth in Woods and 20 C.F.R. § 404.1520c(c)(2). 6 The Commissioner does not

substantively engage with the holding in Kevin H. or 7 argue that I should not follow it, noting only that it was decided in a different district. (Doc. 8 17 at 8–9.)

Rather, the Commissioner argues that Kevin H. is distinguishable because 9 "[t]here is no evidence the ALJ failed to consider the consistency of Dr. Belton's opinion 10 with Dr. Zuess's prior administrative finding" and that "courts should presume that public 11 officers have properly discharged their official duties." (Id. at 9.)

In other words, because 12 the ALJ generically noted that he "fully considered" all medical opinions in his decision, 13 (AR 26), the Commissioner argues I should assume the ALJ properly considered Dr. 14 Zeuss's (and all other) medical opinions in evaluating the consistency of Dr. Belton's 15 opinion. (Doc. 17 at 9.) But the Ninth Circuit has made clear that courts "cannot substitute 16 our conclusions for the ALJ's, or speculate as to the grounds for the ALJ's conclusions." 17 Brown-Hunter v. Colvin, 806 F.3d 487, 495 (9th Cir.

2015) (quoting Treichler v. Comm'r 18 of Soc. Sec. Admin., 775 F.3d 1090, 1103 (9th Cir. 2014)). Because the ALJ provided no 19 explanation for why Dr. Belton's opinion was or was not "consistent... with the evidence 20 from other medical sources and nonmedical sources in the claim," it is apparent that his 21 analysis runs afoul of applicable law.3 22 B. Evaluation of Claimant's Disabling Symptoms 23 If the ALJ finds that a claimant "presented objective medical evidence of an 24 25 3 Claimant argues that the ALJ also erred in finding Dr. Belton's opinion inconsistent with her activities of daily living because there are "critical differences between activities 26 of daily living and activities in a fully time job." (Doc.

13 at 15 (quoting Garrison v. 27 Colvin, 759 F.3d 995, 1016 (9th Cir. 2014).) Because the ALJ failed to engage in the required consistency analysis—which requires analyzing both the medical and nonmedical 28 evidence—it is unnecessary to address Claimant's second argument. 1 underlying impairment which could reasonably be expected to produce the pain or other 2 symptoms alleged," and that there is "no evidence of malingering," the ALJ may "reject 3 [her] testimony about the severity of her symptoms only by offering specific, clear and 4 convincing reasons for doing so." Revels, 874 F.3d at 655 (citation omitted). "This is not 5 an easy requirement to meet: The clear and convincing standard is the most demanding 6 required in Social Security cases." Id. (citation omitted). "If the ALJ fails to provide 7 specific, clear, and convincing reasons for discounting the claimant's subjective symptom 8 testimony, then the ALJ's determination is not supported by substantial evidence." 9 Ferguson v. O'Malley, 95 F.4th 1194, 1199 (9th Cir.

2024). An ALJ, however, is "not 10 required to believe every allegation of disabling pain." Smartt v. Kijakazi, 53 F.4th 489, 11 499 (9th Cir. 2022) (quotation marks omitted). "The standard isn't whether [the] court is 12 convinced, but instead whether the ALJ's rationale is clear enough that it has the power to 13 convince." Id. 14 In this case, the ALJ rejected Claimant's symptom

testimony concerning her lack 15 of feeling in her feet and her lack of sensation in her hands, and in doing so identified 16 specific medical evidence suggesting that she had "[n]ormal or intact sensation." (AR 21– 17 22 (citing AR 1125, 1129, 2036, 2051).)

Claimant does not argue that the ALJ failed to 18 provide specific, clear, and convincing reasons when it cited the objective medical 19 evidence. Rather, she argues that the ALJ "appears to unduly rely on the objective 20 evidence," and claims that this was improper because the ALJ was "not qualified to 21 interpret" that evidence. (Doc. 13 at 17–18.)

The cases she cites in support of this 22 proposition are irrelevant, and there was nothing wrong with the ALJ relying on the 23 medical records to discount Claimant's symptom testimony. See, e.g., Smartt v. Kijakazi, 24 53 F.4th 489, 498 (9th Cir. 2022) ("When objective medical evidence in the record is 25 inconsistent with the claimant's subjective testimony, the ALJ may indeed weigh it as 26 undercutting such testimony.

We have upheld ALJ decisions that do just that in many 27 cases."). 28 In rejecting certain symptom testimony, the ALJ also cited Claimant's ability to 1 climb in and out of a pool, handle and finger objects, care for herself, prepare meals, clean, 2 do laundry, shop, pay bills, manage finances, read, do word games, watch television, use a 3 computer, and watched movies, to discount her testimony concerning her sensation and her 4 concentration.

(AR 20, 24, 26–27.) Again, Claimant does not argue that this doesn't 5 constitute specific, clear, and convincing reasons, and instead argues that the ALJ was not 6 permitted to discount her symptom testimony based on evidence of daily living activities. 7 (Doc. 13 at 18–19.)

The cases Claimant cites in support of this argument are irrelevant 8 and, indeed, her argument contradicts her statement—only one page earlier—that "[i]n 9 assessing a plaintiff's testimony, the ALJ may consider a number of factors, including... 10 daily activities." (AR 17 (citing 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3)).) Her 11 argument thus fails. 12 C. Remand for Harmful Error 13 Having found that the ALJ erred in evaluating Dr. Belton's opinion, the remedy 14 must be identified.

Not every error requires vacating an ALJ's decision. If an "error was 15 harmless, meaning it was inconsequential to the ultimate nondisability determination," a 16 court may affirm. Ford v. Saul, 950 F.3d 1141, 1154 (9th Cir. 2020) (quotation marks 17 omitted); see also Buck v. Berryhill, 869 F.3d 1040, 1048 (9th Cir. 2017) ("The Court may 18 not reverse an ALJ's decision on account of a harmless error.").

19 The Commissioner does not argue that the insufficient analysis of Dr. Belton's 20 opinion was harmless, (see generally Doc. 17), and it is apparent that this error is not 21 harmless. If the proper consistency analysis had resulted in the limitations set forth in Dr. 22 Belton's opinion being

incorporated into the RFC—including that Claimant could only 23 follow one to two step instructions—Claimant may have been found disabled.

Because the 24 ALJ committed harmful error in discounting Dr. Belton's opinion based on the consistency 25 factor, the ALJ's decision denying Claimant benefits will be vacated. 26 Accordingly, 27 IT IS ORDERED that the decision of the ALJ is vacated and remanded for 28 further administrative proceedings. 1 IT IS FURTHER ORDERED directing the Clerk of Court to enter final judgment 2 || consistent with this Order and close this case.

3 Dated this 31st day of March, 2026. 4 □ ' H le Sharad H. Desai 8 United States District Judge 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 -13-