

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 29 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TARA JEAN McMANUS,

Plaintiff - Appellant,

v.

FRANK BISIGNANO, Commissioner of
Social Security,

Defendant - Appellee.

No. 25-409

D.C. No.

2:23-cv-01248-RSM

Western District of Washington,
Seattle

ORDER

Before: CANBY, M. SMITH, and FORREST, Circuit Judges.

The motion (Docket Entry No. 12) for reconsideration is denied. *See* 9th Cir. R. 27-10; *Bowles v. Russell*, 551 U.S. 205 (2007) (court lacks authority to create equitable exceptions to jurisdictional requirement of timely notice of appeal).

No further filings will be entertained in this closed case.

Appendix A
1

Writ of certiorari pg.

9.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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MAR 3 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TARA JEAN McMANUS,

Plaintiff - Appellant,

v.

LELAND DUDEK, Acting Commissioner
of Social Security,

Defendant - Appellee.

No. 25-409

D.C. No.

2:23-cv-01248-RSM

Western District of Washington,
Seattle

ORDER

Before: CANBY, M. SMITH, and FORREST, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the January 14, 2025 notice of appeal was not filed within 60 days after the district court's judgment entered on September 25, 2024. *See* 28 U.S.C. § 2107(b); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

writ of certiorari pg.

Appendix: A210.



Molly C. Dwyer
Clerk of Court

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

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JAN 21 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DOCKETING NOTICE

Docket Number: 25-409
Originating Case Number: 2:23-cv-01248-RSM
Short Title: McManus v. Colvin

Dear Appellant/Counsel

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case.

Motions filed along with the notice of appeal in the district court are not automatically transferred to this court for filing. Any motions seeking relief from this court must be separately filed in this court's docket.

Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this court.

You must file a Disclosure Statement (Form 34) within 14 days of this notice if your case: (1) involves a non-governmental corporation, association, joint venture, partnership, limited liability company, or similar entity; (2) is a bankruptcy case; (3) is a criminal case involving an organizational victim; or (4) involves review of state court proceedings. See Ninth Circuit Rule 26-1.1.

Failure of the appellant to comply with the time schedule order may result in dismissal of the appeal.

Please read the enclosed materials carefully.

Writ of Certiorari pg.

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United States District Court

WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TARA JEAN MCMANUS,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

JUDGMENT IN A CIVIL CASE

Case No. C23-1248 RSM

— **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

THE COURT HAS ORDERED THAT:

For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this case is **DISMISSED** with prejudice.

DATED this 25th day of September, 2024.

RAVI SUBRAMANIAN
Clerk

s/TAJMA EATON
Deputy Clerk

Writ of Certiorari pg

Appendix:

B.12

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TARA JEAN M.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C23-1248 RSM

ORDER AFFIRMING AND DISMISSING THE CASE

Plaintiff, proceeding *pro se*, seeks review of the denial of her application for Supplemental Security Income (SSI). Plaintiff appears to contend: (1) the ALJ erred at step three, (2) the ALJ erred by rejecting her symptom testimony, (3) the ALJ erred by failing to complete her record, (4) new evidence undermines the ALJ's decision, (5) Defendant violated her rights under the Americans with Disabilities Act and the Rehabilitation Act, (6) Defendant violated her constitutional rights, and (7) the ALJ erred in previous decisions. *See* Dkt. 35. As discussed below, the Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with prejudice.

BACKGROUND

Plaintiff is 36 years old, has a limited education, and has no past relevant work. Admin. Record (AR) 35. In October 2019, Plaintiff applied for benefits, alleging disability as of

**ORDER AFFIRMING AND DISMISSING
THE CASE - 1**

1 November 1, 2017. AR 105–06, 112–13. Plaintiff’s application was denied initially and on
2 reconsideration. AR 111, 123. The ALJ conducted a hearing on August 3, 2021, where Plaintiff
3 was represented (AR 42–67), and issued a decision on August 17, 2021, finding Plaintiff not
4 disabled. AR 24–41. Plaintiff now seeks review of the ALJ’s decision.¹

5 **DISCUSSION**

6 The Court may reverse the ALJ’s decision only if it is legally erroneous or not supported
7 by substantial evidence of record. *Ford v. Saul*, 950 F.3d 1141, 1154 (9th Cir. 2020). The Court
8 must examine the record but cannot reweigh the evidence or substitute its judgment for the
9 ALJ’s. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When evidence is susceptible to
10 more than one interpretation, the Court must uphold the ALJ’s interpretation if rational. *Ford*,
11 950 F.3d at 1154. Also, the Court “may not reverse an ALJ’s decision on account of an error
12 that is harmless.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

13 **1. Step Three**

14 At step three, the ALJ found the severity of Plaintiff’s mental impairments, “considered
15 singly and in combination, do not meet or medically equal the criteria of listings 12.02, 12.04,
16 12.06.” AR 30. Plaintiff appears to contend the ALJ erred by finding she has several severe
17 mental health impairments at step two but declining to find she meets several mental disorder
18 Listings at step three. Dkt. 35 at 2, 7.

19 Finding an impairment severe and finding an impairment meets the Listings concern
20 different aspects of the disability evaluation. At step two, Plaintiff has the burden of showing
21

22 _____
23 ¹ According to the Court’s amended Scheduling Order, Plaintiff’s optional Reply Brief was due June 12, 2024. Dkt.
33. Plaintiff moved to extend the due date for her Reply Brief to “5/22/24.” Dkt. 38. The Court assumes Plaintiff
meant June 22, 2024. In any case, Plaintiff submitted it before her requested date (Dkt. 40), therefore the Court
terminates Plaintiff’s Motion for Extension of Time (Dkt. 38) as MOOT.

1 she has a medically determinable impairment or combination of impairments that are severe,
2 such that they would significantly limit her ability to perform basic work activities. *See Smolen*
3 *v. Chater*, 80 F.3d 1273, 1289–90 (9th Cir. 1996) (citation omitted). In contrast, at step three,
4 Plaintiff has the burden of showing she meets the Listing by providing the necessary “symptoms,
5 signs, and laboratory findings. *See Tackett v. Apfel*, 180 F.3d 1094, 1099 (9th Cir. 1999). Here,
6 Plaintiff appears to dispute the ALJ’s finding that she does not meet Listings 12.02
7 (neurocognitive disorders), 12.04 (depressive, bipolar and related disorders), and 12.06 (anxiety
8 and obsessive-compulsive disorders), and argues she meets Listing 12.05 (intellectual disorder).
9 Dkt. 35 at 2.

10 a. **Listings 12.02, 12.04, 12.06**

11 To meet Listings 12.02, 12.04, and 12.06, a claimant must meet the criteria for paragraph
12 A and B, or A and C. 20 C.F.R. Pt. 404, Subpt. P, App. 1, 12.00(A)(2). Here, the ALJ found
13 Plaintiff did not meet criterial for paragraphs B and C. AR 30–31.

14 Paragraph B requires a claimant’s mental disorder result in “extreme limitation of one, or
15 marked limitation of two”² areas of mental functioning, including understanding, remembering,
16 or applying information; interacting with others; concentrating, persisting, or maintaining pace;
17 and adapting or managing oneself. 20 C.F.R. § Pt. 404, Subpt. P, App. 1, 12.00(A)(2)(b). The
18 ALJ found Plaintiff only moderately limited in these functioning areas because she is able to
19 shop in stores, use public transportation, live independently, maintain relationships with family
20 and friends, and interact with her providers and others. AR 30–31. The record, including the
21 evidence Plaintiff relies on, supports the ALJ’s findings. *See* AR 49–50 (testifying that she lives

23 2 “Extreme limitation” is defined as unable to function independently, appropriately, effectively, and on a sustained basis, while “marked limitation” is defined as “seriously limited.” 20 C.F.R. Pt. 404, Subpt. P, App. 1, 12.00(F)(2).

1 alone), 354–56 (finding mild to moderate impairments with Plaintiff’s mental functioning).

2 Paragraph C requires that the claimant’s mental disorder be “serious and persistent,” in
3 that there is a medically documented history of the existence of the disorder over a period of at
4 least two years. 20 C.F.R. § Pt. 404, Subpt. P, App. 1, 12.00(G)(2)(a). It also requires evidence
5 of both (1) medical treatment, mental health therapy, psychosocial support(s), or a highly
6 structured setting(s) that is ongoing and that diminishes the symptoms and signs of the mental
7 disorder; and (2) marginal adjustment, meaning that the claimant has minimal capacity to adapt
8 to changes in the environment or to demands that are not already part of his or her daily life. 20
9 C.F.R. § Pt. 404, Subpt. P, App. 1, 12.00(G)(2)(b), (c). Here, the ALJ found no showing of an
10 increase in Plaintiff’s mental status abnormalities and Plaintiff has not required any significant
11 treatment changes. AR 31. The assessments Plaintiff cite to give no indication the ALJ’s
12 finding was not supported by substantial evidence.

13 **b. Listing 12.05**

14 Listing 12.05 “is characterized by significantly subaverage general intellectual
15 functioning, significant deficits in current adaptive functioning, and manifestation of the disorder
16 before age 22.” 20 C.F.R. Pt. 404, Subpt. P, App. 1, 12.00(A)(2). To meet this Listing, a
17 claimant must satisfy this description (paragraph A) or the requirements of paragraph B. 20
18 C.F.R. Pt. 404, Subpt. P, App. 1, 12.05. The regulations explain that “significantly subaverage
19 general intellectual functioning” is identified by a claimant’s “cognitive inability to function at a
20 level required to participate in standardized intelligence testing.” 20 C.F.R. Pt. 404, Subpt. P,
21 App. 1, 12.00(H)(2)(a). Plaintiff is unable to show she meets this requirement given she was
22 able to complete an IQ test. *See* AR 353. Paragraph B requires that a claimant have a full scale
23 IQ score of 70 or below, or a full scale IQ score of 71–75 with a verbal or performance IQ score

1 of 70 or below. 20 C.F.R. Pt. 404, Subpt. P, App. 1, 12.05(B). As Defendant points out, the IQ
2 score Plaintiff points to surpasses these requirements, therefore she is unable to show she meets
3 the requirements of paragraph B. *See* AR 353.

4 In sum, Plaintiff has not met her burden in showing she meets the necessary criteria for
5 Listings 12.02, 12.04, 12.05, and 12.06. Accordingly, Plaintiff has not shown the ALJ erred at
6 step three.

7 **2. Plaintiff's Symptom Testimony**

8 Plaintiff testified she is unable to work due to her anxiety and depression. AR 53, 58.
9 She also testified to having two to four migraine headaches a week, and that when she has them,
10 she is unable to do anything. AR 54–55, 58, 60. In her function reports, Plaintiff wrote she has
11 limited cognitive ability, is easily side-tracked, and is unable to manage her time. AR 277.

12 When assessing a claimant's testimony, the ALJ determines whether a claimant has
13 presented objective medical evidence establishing underlying impairments that could cause the
14 symptoms alleged. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). If there is no
15 affirmative evidence of malingering, the ALJ can only discount the claimant's testimony as to
16 symptom severity by providing “specific, clear, and convincing” reasons supported by
17 substantial evidence. *Id.* “The standard isn't whether our court is convinced, but instead
18 whether the ALJ's rationale is clear enough that it has the power to convince.” *Smartt v.*
19 *Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022).

20 Here, the ALJ found Plaintiff's medically determinable impairments could reasonably
21 expect to cause her alleged symptoms, but ultimately rejected Plaintiff's testimony because it
22 was not supported by the record. AR 32–34. Plaintiff appears to contend the ALJ's finding that
23 her testimony is inconsistent with her activity level, including living independently, cooking,

1 cleaning, doing laundry, and gardening. Dkt. 35 at 5.

2 An ALJ may discount a claimant's symptom testimony when it is inconsistent with the
3 claimant's general activity level. *See Molina*, 674 F.3d at 1112–13; *Lingenfelter v. Astrue*, 504
4 F.3d 1028, 1040 (9th Cir. 2007). Plaintiff's ability to engage in the activities outlined by the
5 ALJ could reasonably discount parts of her testimony. Plaintiff testified several times she is
6 unable to do anything throughout the week due to her migraines, yet she is able to perform
7 household chores, travel by public transportation, and engage in physical labor. *See Smartt*, 53
8 F.4th at 499 (“Even if the claimant experiences some difficulty or pain, [his] daily activities
9 ‘may be grounds for discrediting the claimant’s testimony to the extent that they contradict
10 claims of a totally debilitating impairment.’”). But these activities do not necessarily speak to
11 her statements about her difficulties with concentration, so Plaintiff's activity level alone does
12 not substantially undermine Plaintiff's testimony.

13 However, any errors resulting from this reasoning would be rendered harmless, given the
14 ALJ also provided other reasons to reject Plaintiff's testimony. *See Carmickle v. Comm'r, Soc.*
15 *Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (including an erroneous reason among other
16 reasons to discount a claimant's credibility does not negate the validity of the overall credibility
17 determination and is at most harmless error where an ALJ provides other reasons that are
18 supported by substantial evidence). For example, the ALJ noted inconsistencies with objective
19 medical evidence. AR 33. “When objective medical evidence in the record is *inconsistent* with
20 the claimant’s subjective testimony, the ALJ may indeed weigh it as undercutting such
21 testimony.” *Smartt*, 53 F.4th at 498. Plaintiff's examinations show her orientation, memory,
22 insight, mood, judgment, and behavior were within normal limits. AR 370, 401. Plaintiff was
23 also observed as having normal ability to give history, hear, and understand, as well as able to

ORDER AFFIRMING AND DISMISSING
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1 follow simple and complex instructions. *Id.* The evidence Plaintiff cites to similarly shows her
2 speech and memory were only mildly impaired. *See AR 353–54.* The ALJ also pointed to
3 Plaintiff’s testimony that she stopped taking treatment for her anxiety and depression. AR 34,
4 54. “[A]n ‘unexplained, or inadequately explained, failure to seek treatment’ may be the basis
5 for an adverse credibility finding unless one of a ‘number of good reasons for not doing so’
6 applies.” *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007) (quoting *Fair v. Bowen*, 885 F.2d 597,
7 603 (9th Cir. 1989)). Plaintiff did not provide a “good reason” here, therefore Plaintiff cannot
8 show error with the ALJ’s reasoning.

9 In sum, because the ALJ provided at least one valid reason, supported by substantial
10 evidence, to reject Plaintiff’s testimony, the ALJ did not err.

11 **3. Develop the Record**

12 Plaintiff also appears to argue the ALJ should have further developed her record. Dkt. 35
13 at 5–6.

14 The ALJ “has an independent duty to fully and fairly develop the record.” *Tonapetyan v.*
15 *Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001) (internal citations and quotations omitted). “The
16 ALJ’s duty to supplement a claimant’s record is triggered by ambiguous evidence, the ALJ’s
17 own finding that the record is inadequate or the ALJ’s reliance on an expert’s conclusion that the
18 evidence is ambiguous.” *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005) (citing
19 *Tonapetyan*, 242 F.3d at 1150). Here, neither the ALJ nor the medical sources throughout
20 Plaintiff’s record found the record to be inadequate. Plaintiff has also pointed out no ambiguities
21 with the medical evidence relied on by the ALJ. Further, the ALJ’s duty to develop the record
22 cannot be used to shift the burden of proving disability to the ALJ. *See Mays v. Massanari*, 276
23 F.3d 453, 460 (9th Cir. 2001) (noting it is the claimant’s “duty to prove she was disabled” and

1 she cannot “shift her own burden” to the ALJ by virtue of the ALJ’s duty to develop the record).
2 It is the claimant who is “responsible for providing the evidence used to make the RFC
3 determination” and for ultimately proving she is disabled. *Gray v. Comm'r. of Soc. Sec. Admin.*,
4 365 Fed.Appx. 60, 63 (9th Cir. 2010); 20 C.F.R. § 404.1512 (“In general, you have to prove to
5 us that you are blind or disabled. You must inform us about or submit all evidence known to you
6 that relates to whether or not you are blind or disabled.”).

7 Plaintiff also appears to argue she was not presented enough time to present evidence
8 during the hearing with the ALJ. Dkt. 35 at 4. But as Defendant points out, Plaintiff was
9 represented during the hearing, and her attorney raised no issues regarding her record, instead
10 confirming its completeness. *See* AR 46. Claimants “must raise issues at their administrative
11 hearings in order to preserve them on appeal before this Court.” *Meanel v. Apfel*, 172 F.3d 1111,
12 1115 (9th Cir. 1999). At the hearing, neither Plaintiff nor her attorney raised any issues
13 regarding the adequacy of her record before the ALJ, therefore Plaintiff cannot raise this issue
14 before the Court now.

15 **4. New Evidence**

16 Plaintiff attached to her Opening Brief several documents and appears to contend the new
17 evidence undermines the ALJ’s decision. *See* Dkt. 35-1. Plaintiff submitted this evidence to the
18 Appeals Council, which ultimately decided it would not change the ALJ’s decision. AR 11.

19 The Court is required to evaluate this evidence to determine whether the ALJ’s decision
20 is supported by substantial evidence. *Brewes v. Commissioner of Social Security*, 682 F.3d 1157,
21 1160 (9th Cir. 2012) (when a claimant submits evidence for the first time to the Appeals Council,
22 which considers that evidence in denying review of the ALJ’s decision, the new evidence is part
23 of the administrative record the district court must consider it in determining whether the

1 Commissioner's decision is supported by substantial evidence). New evidence is material "if
2 there is a 'reasonabl[e] possibility that the new evidence would have changed the outcome of the
3 ... determination.'" *Bruton v. Massanari*, 268 F.3d 824, 827 (9th Cir. 2001) (alterations and
4 omission in original) (quoting *Booz v. Sec'y of Health & Human Servs.*, 734 F.2d 1378, 1380
5 (9th Cir. 1984)).

6 Reviewing the attachments, they have no bearing on the ultimate issue of Plaintiff's
7 disability because they simply reiterate Plaintiff's medical history discussed elsewhere
8 throughout the record or contain other information that is already in Plaintiff's record. *See* Dkt.
9 35-1. Accordingly, the Court does not find Plaintiff's evidence material, such that they would
10 have changed the outcome of the ALJ's decision.

11 **5. Americans with Disabilities Act and Rehabilitation Act**

12 Plaintiff appears to argue the ALJ's denial of benefits violated her civil rights under the
13 Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, and the Rehabilitation Act (RA), 29
14 U.S.C. § 794. Dkt. 35 at 1-3.

15 The ADA prohibits discrimination of "a public entity" on the basis of an individual's
16 disability. *See* 42 U.S.C. § 12132. The ADA defines a "public entity", in pertinent part, as "any
17 *State or local* government; any department, agency, special purpose district, or other
18 instrumentality of a *State or States or local* government . . ." *See* 42 U.S.C. § 12131(1)
19 (emphases added). The SSA is a federal agency, therefore it is not subject to any claims under
20 the ADA.

21 Moreover, Plaintiff's claim under the ADA involves the interpretation of federal law,
22 therefore it arises within the context of the federal question jurisdiction statute, 28 U.S.C. § 1331.
23 However, section 405(h) of the Social Security Act states that "[n]o action against the United

ORDER AFFIRMING AND DISMISSING
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1 States, the Commissioner of Social Security, or any officer or employee thereof shall be brought
2 under section 1331 or 1346 of Title 28 to recover on any claim arising under this subchapter.”
3 Accordingly, this Court has no subject matter jurisdiction to hear Plaintiff’s ADA claim. *See*
4 *Geschke v. Soc. Sec. Admin.*, No. C06-1256C, 2007 WL 1140281, at *10 (W.D. Wash. Apr. 17,
5 2007) (finding that Section 405(h) bars general federal question claims).

6 With regards to the RA, both the ADA and the RA are designed to prohibit
7 discrimination on the basis of disability. *Lovell v. Chandler*, 303 F.3d 1039, 1052 (9th Cir.
8 2002). “The ADA applies only to public entities, whereas the RA proscribes discrimination in
9 all federally-funded programs.” *Id.* “To establish a violation of § 504 of the RA, a plaintiff must
10 show that (1) she is handicapped within the meaning of the RA; (2) she is otherwise qualified for
11 the benefit or services sought; (3) she was denied the benefit or services solely by reason of her
12 handicap; and (4) the program providing the benefit or services receives federal financial
13 assistance.” *Id.* Here, Plaintiff has not shown she meets the elements, therefore Plaintiff’s claim
14 fails.

15 **6. Constitutional Claims**

16 Plaintiff appears to contend generally throughout her Opening Brief that her
17 constitutional rights have been violated. Dkt. 35 at 3, 8.

18 The Court can consider “any colorable constitutional claim of due process violation that
19 implicates a due process right either to a meaningful opportunity to be heard or to seek
20 reconsideration of an adverse benefits determination.” *See Dexter v. Colvin*, 731 F.3d 977, 980
21 (9th Cir. 2013) (citations omitted). A constitutional claim is “not ‘colorable’, if it ‘clearly
22 appears to be immaterial and made solely for the purpose of obtaining jurisdiction or . . . is
23 wholly insubstantial or frivolous.’” *Hoye v. Sullivan*, 985 F.2d 990, 991–92 (9th Cir. 1992)

ORDER AFFIRMING AND DISMISSING
THE CASE - 10

1 (citations omitted). The mere assertion of a bare constitutional violation without supporting
2 allegations is not a colorable constitutional claim. *Klemm v. Astrue*, 543 F.3d 1139, 1144 (9th
3 Cir. 2008) (internal quotation marks and citation omitted). “Rather, the claim must be supported
4 by facts sufficient to state a violation of substantive or procedural due process.” *Id.* (internal
5 quotation marks and citation omitted). Plaintiff fails to provide any such bases for her claim,
6 therefore the Court rejects this argument.

7 **7. 2001 and 2017 Decisions**

8 Plaintiff appears to appeal the findings from her previous applications from 2001 and
9 2017. Dkt. 35 at 7–9.

10 A claimant may obtain judicial review of a final decision of the Commissioner by a civil
11 action commenced 60 days after the mailing of such a decision. 42 U.S.C. § 405(g). The
12 Appeals Council may extend this period “upon a showing of good cause.” 42 U.S.C. § 405(g); 20
13 C.F.R. § 422.210(c). It is presumed the claimant receives the notice five days after the date on
14 the notice, unless “there is a reasonable showing otherwise.” 20 C.F.R. § 422.210(c). “[T]he
15 Commissioner’s decision is not final until the Appeals Council denies review or, if it accepts the
16 case for review, issues its own findings on the merits.” *Brewes v. Comm’r of Soc. Sec. Admin.*,
17 682 F.3d 1157, 1162 (9th Cir. 2012). “A claimant’s failure to exhaust the procedures set forth in
18 the Social Security Act, 42 U.S.C. § 405(g), deprives the district court of jurisdiction.” *Bass v.*
19 *Soc. Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989).

20 The record shows Plaintiff failed to appear for a hearing before an ALJ for her 2001
21 application, leading to the dismissal of the matter. *See* AR 68–70. Therefore, Plaintiff did not
22 receive a final decision from the Commissioner to invoke this Court’s review, and even if she
23 had, her request for a judicial review significantly surpasses the 60-day statute of limitation as

1 well as the five-day presumption. With regard to the ALJ's unfavorable decision from 2017,
2 Plaintiff's request for judicial review was dismissed by this Court in June 2019 for failing to
3 timely submit her Opening Brief. *See* AR 101–03. Accordingly, the Court rejects Plaintiff's
4 request to review Defendant's previous decisions.

5 **CONCLUSION**

6 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this
7 case is **DISMISSED** with prejudice. The Clerk is directed to send a copy of this Order to
8 Plaintiff.

9 DATED this 25th day of September, 2024.

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14 RICARDO S. MARTINEZ
15 UNITED STATES DISTRICT JUDGE
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**Additional material
from this filing is
available in the
Clerk's Office.**