

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 16 2013

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

LAURA ZENS,

Plaintiff - Appellant,

v.

SOCIAL SECURITY ADMINISTRATION,
Commissioner,

Defendant - Appellee.

No. 12-16215

D.C. No. 2:11-cv-00723-SRB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Susan R. Bolton, District Judge, Presiding

Submitted July 12, 2013**

Before: HUG, FARRIS, and LEAVY, Circuit Judges.

Laura Zens appeals pro se the district court's judgment affirming the Commissioner of Social Security's denial of her application for Social Security disability insurance benefits and supplemental security income benefits under Titles II and XVI of the Social Security Act. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We review de novo the district court's decision upholding the denial of benefits. *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012). We must affirm the denial of benefits unless it is based on legal error or the findings of fact are not supported by substantial evidence. *Id.*

Zens waived the argument that the Administrative Law Judge ("ALJ") failed to fully and fairly develop the record because she failed to raise this argument before the district court. *See Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1007 (9th Cir. 2006).

The ALJ did not err by failing sua sponte to offer Zens a video-conference hearing because the record does not show that Zens demonstrated diminished cognitive abilities at the in-person hearing. *See* 20 C.F.R. § 404.936(c)-(f). Finally, Zens waived the argument that the Appeals Council erred in its evaluation of the new evidence she submitted after the ALJ issued his decision because she failed to raise the argument in her opening brief. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996).

AFFIRMED.