

FILED

OCT 11 2017

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NAOMI FAWN MARSH,

Plaintiff-Appellant,

v.

**NANCY A. BERRYHILL, Acting
Commissioner Social Security,**

Defendant-Appellee.

No. 15-17306

D.C. No. 3:11-cv-02096-CRB

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Argued and Submitted September 13, 2017
San Francisco, California

Before: **KOZINSKI** and **FRIEDLAND**, Circuit Judges, and **ARTERTON**,**
District Judge.

While the Social Security Administration (SSA) is “responsible for making
the determination or decision about whether [a claimant meets] the statutory

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The Honorable Janet Bond Arterton, United States District Judge for
the District of Connecticut, sitting by designation.

definition of disability,” 20 C.F.R. § 404.1527(d)(1), Dr. Betat’s chart note contained information about Marsh’s condition and capacity that went beyond a mere statement of disability. These findings informed his assessment that she “appear[ed] to be disabled.” The ALJ therefore erred by neither considering Dr. Betat’s opinion nor providing reasons to reject it. “In order to reject an examining physician’s opinion, the ALJ has to give clear and convincing reasons.” Hill v. Astrue, 698 F.3d 1153, 1159–60 (9th Cir. 2012) (internal citation and quotation marks omitted). Accordingly, SSA’s position was not substantially justified. See, e.g., Tobeler v. Colvin, 749 F.3d 830, 834 (9th Cir. 2014) (“To avoid an award of EAJA fees . . . the government must show that its position was substantially justified at each stage of the proceedings.”).

REVERSED AND REMANDED.