**NOT FOR PUBLICATION**

FILED

MAY 15 2025

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| JUDY BENSON,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>LELAND DUDEK, Acting Commissioner of Social Security,<br><br>Defendant-Appellee. | No. 24-4647<br><br>D.C. No. 2:23-cv-01371-MTL<br><br>MEMORANDUM[*] |

Appeal from the United States District Court
for the District of Arizona
Michael T. Liburdi, District Judge, Presiding

Submitted May 13, 2025[**]
San Francisco, California

Before: MCKEOWN and DE ALBA, Circuit Judges, and BENNETT,[***] District Judge.

Appellant Judy Benson ("Benson") seeks review of the district court's order

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

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

[***] The Honorable Richard D. Bennett, United States Senior District Judge for the District of Maryland, sitting by designation.

and judgment affirming the Commissioner of Social Security's ("Commissioner") denial of her application for supplemental income benefits. We have jurisdiction pursuant to 28 U.S.C. § 1291, review de novo a district court's order upholding the Commissioner's denial of benefits, and reverse only if the decision contains legal error or is not supported by substantial evidence. *Ford v. Saul*, 950 F.3d 1141, 1153–54 (9th Cir. 2020). We affirm.

1. On appeal, Benson challenges the Administrative Law Judge's ("ALJ") assessment of her residual functional capacity ("RFC"), contending that the ALJ failed to meet the high standard required to reject her testimony. We disagree.

When there is no evidence of malingering, an ALJ is required to articulate "specific, clear and convincing reasons" to reject a claimant's testimony. *Garrison v. Colvin*, 759 F.3d 995, 1014–15 (9th Cir. 2014) (citation omitted). The ALJ must provide specific, clear, and convincing reasons for discounting the claimant's subjective symptom testimony, otherwise the ALJ's determination is not supported by substantial evidence. *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1040 (9th Cir. 2007). This Court has "made clear that an ALJ is not 'required to believe every allegation of disabling pain, or else disability benefits would be available for the asking, a result plainly contrary to' the Social Security Act." *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022) (citation omitted). "Contradiction with the medical record is a sufficient basis for rejecting the claimant's subjective testimony."

*Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008).

In discounting Benson's testimony, the ALJ identified "specific, clear, and convincing reasons supporting a finding that [Benson's] limitations were not as severe as [she] claimed." *Ahearn v. Saul*, 988 F.3d 1111, 1117 (9th Cir. 2021). First, the ALJ properly considered and summarized the objective medical evidence and identified some limitations based on Benson's claimed cyclical vomiting syndrome. The ALJ concluded that greater limitations were not warranted because Benson's testimony about the severity of her symptoms contradicted her medical records, which showed that her condition was generally under control and that she had regularly denied experiencing certain symptoms like nausea.

The ALJ also discussed nonmedical evidence that supported the decision that greater restrictions were not warranted despite Benson's testimony. For example, Benson testified that "she could still perform her prior work at 1-800 Flowers, but she was not able to return because the company no longer employed workers in Arizona." Benson also testified that "she thought she could have performed work at CarMax," where she had recently interviewed. Thus, the ALJ reasonably declined to rely on Benson's symptom testimony based on contradictions with objective medical evidence and Benson's own statements that she recently applied for jobs she believed she could perform despite her impairments.

An ALJ may also consider "whether the claimant engages in daily activities

inconsistent with the alleged symptoms." *Lingenfelter*, 504 F.3d at 1040. Here, Benson reported that she prepared her own meals, washed her laundry, cleaned a few times a week, cared for pets, shopped, handled money, talked on the phone and via Facebook chat, and traveled. The ALJ explained that "[s]ome of the physical and mental abilities and social interactions required in order to perform these activities are the same as those necessary for obtaining and maintaining employment." The ALJ reasonably concluded that Benson's daily activities were inconsistent with her symptom testimony and claimed limitations.

2. Benson further argues that this Court should review the ALJ's decision under a regulation that became effective two years after the ALJ's June 9, 2022 denial of her claim. At the time of the ALJ's June 2022 decision, 20 C.F.R. § 404.1560(b)(1)—the regulation defining "past relevant work"—provided a fifteen-year lookback period, meaning Benson's employment from 2014 to 2016 with 1-800-Flowers was considered at Step Four. On April 18, 2024, the Social Security Administration ("SSA") promulgated a final rule reducing the relevant work period to five years. Intermediate Improvement to the Disability Adjudication Process, Including How We Consider Past Work, 89 Fed. Reg. 27,653 (Apr. 18, 2024). While the text of the revised regulation did not explicitly state an effective date, the preamble of the final rule provided that the revised lookback period would take effect and be applied to all claims pending and newly beginning on

June 8, 2024, *see id*. at 27,653, though this effective date was subsequently deferred to June 22, 2024, *see* Intermediate Improvement to the Disability Adjudication Process, Including How We Consider Past Work; Deferral of Effective Date, 89 Fed. Reg. 48,138 (June 5, 2024). The June 2024 rule clarified that the SSA would apply the final rule "to all claims newly filed and pending beginning on June 22, 2024." *Id*. On June 6, 2024, the SSA issued a Notice of Social Security Ruling that included a policy interpretation of the new rule, which stated that the SSA "expect[s] that Federal courts will review our final decisions using the rules that were in effect at the time we issued the decisions." SSR 24-2p, 89 Fed. Reg. 48,479, 48,479 n.1 (June 6, 2024).

Benson argues that this Court should review the ALJ's decision under the new regulation. To be clear, she does not—and cannot—contend that the ALJ erred in applying the fifteen-year lookback period for past relevant work. Rather, she contends that the new five-year rule rendered the ALJ's finding at Step Four legally erroneous. She acknowledges that SSR 24-2p explains that the new definition is intended to be applied prospectively to ALJ decisions issued on or after June 22, 2024, but she takes the position that it should "carr[y] no weight" because, according to Benson, SSR 24-2p "represents an inappropriate effort to modify the plain language of the Regulation." This Court has recently declined to apply the new regulation to claims adjudicated before June 22, 2024. *See Dial v. O'Malley*,

No. 23-3423, 2024 U.S. App. LEXIS 25654, at *3 (9th Cir. Oct. 11, 2024); *McClune v. Dudek*, No. 24-2911, 2025 U.S. App. LEXIS 8731, at *5–6 (9th Cir. Apr. 14, 2025); *Dodge v. Dudek*, No. 24-2899, 2025 U.S. App. LEXIS 8729, at *5–6 (9th Cir. Apr. 14, 2025). Because the ALJ's denial of Benson's claim became the final decision of the Commissioner in May 2023, and because the Commissioner has stated that the new rule does not apply to agency decisions that became final before the rule took effect, we decline Benson's invitation to apply the new regulation to her appeal. *See Auer v. Robbins*, 519 U.S. 452, 461 (1997) (explaining that an agency's interpretation of its own rule is "controlling unless 'plainly erroneous or inconsistent with the regulation'" (citation omitted) (cleaned up)); *Revels v. Berryhill*, 874 F.3d 648, 656 n.2 (9th Cir. 2017) (explaining that we "defer to Social Security Rulings unless they are plainly erroneous or inconsistent with the [Social Security] Act or regulations" (citation omitted) (alteration in original)); *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006, 1011 n.1 (9th Cir. 2003) (reviewing the ALJ's decision on appeal under the regulations that were in effect at the time of the final decision, not under the regulations that were published after the decision but before the appeal).

**AFFIRMED.**