NOT FOR PUBLICATION

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANAE K. HOWELL, Plaintiff - Appellant, v. FRANK BISIGNANO, Commissioner of Social Security, Defendant - Appellee.	No. 24-5242 D.C. No. 3:23-cv-06168-MLP MEMORANDUM[*]

Appeal from the United States District Court
for the Western District of Washington
Michelle L. Peterson, Magistrate Judge, Presiding

Submitted August 22, 2025[**]
Portland, Oregon

Before: CALLAHAN, M. SMITH, and MENDOZA, Circuit Judges.

Danae Howell appeals the district court's order affirming the denial of her application for supplemental security income. 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 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).

Reviewing de novo, reversal is appropriate only if the decision by the administrative law judge ("ALJ") was not supported by substantial evidence or was based on legal error. *Smartt v. Kijakazi*, 53 F.4th 489, 494 (9th Cir. 2022). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Biestek v. Berryhill*, 587 U.S. 97, 103 (2019) (internal quotations omitted). This review is "highly deferential," *Kitchen v. Kijakazi*, 82 F.4th 732, 738 (9th Cir. 2023) (internal quotations omitted), and "if the evidence is susceptible to more than one rational interpretation, it is the ALJ's conclusion that must be upheld," *Farlow v. Kijakazi*, 53 F.4th 485, 488 (9th Cir. 2022) (internal quotations omitted).

1. Substantial evidence supports the ALJ's findings regarding the medical evidence. For starters, the assessment by Kacie Hamreus, PA-C, was inconsistent with other medical records regarding Howell's "exertional level." For example, Hamreus determined that Howell could not walk, stand, or sit for any amount of time, but medical records from another provider who saw Howell around the same time noted that Howell was "no longer using her walker." By contrast, Dr. Richard Henegan's evaluation that Howell had "normal ambulatory mannerisms" and no sitting limitations, was consistent with the treatment notes from Howell's other providers. Indeed, Howell's physical therapist corroborated this evaluation when noting in her own evaluation that Howell was "back at her

farm, so she is doing some bending" and was "not limited in sitting tolerance."[1] Howell also argues the ALJ incorrectly determined that her cauda equina syndrome was not a "severe impairment," but to the extent the ALJ erred, any error was harmless. The ALJ ultimately determined that Howell had another severe impairment, *see Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017) (harmless error where "step two was decided in [claimant's] favor"), and also accounted for Howell's limitation in assessing her residual functional capacity ("RFC") by requiring "ready access to bathroom facilities," *see Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007) (finding harmless error where ALJ considered limitation at a later step of the analysis).

2. Substantial evidence supports the ALJ's determination that Howell's testimony was inconsistent with the medical evidence. Howell alleged that she could not bend, or twist, but the record shows that she was able to bend over 90

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[1] Howell argues that Dr. Henegan's opinion regarding her back condition should be disregarded because "an internet search reveals that he appears to be board certified in *obstetrics and gynecology*, *not* in orthopedics." This argument raises concerns for the court because Howell's counsel—Eitan Kassel Yanich—argued in other cases that Dr. Henegan's opinion should be credited for medical conditions outside of obstetrics and gynecology. *See, e.g.*, *Smith v. Bisignano*, No. 24-5118, Dkt. 9 at 26–27 (Nov. 26, 2024) (arguing that the ALJ "improperly rejected Dr. Henegan's opinion" regarding a diagnosis of epilepsy and orthopedic issues, including shoulder pain). Why would Dr. Henegan's qualifications as an obstetrician and gynecologist disqualify his opinion about a back condition in one case but not disqualify his opinions regarding epilepsy and should pain in another? The court cautions Mr. Yanich from taking such internally inconsistent and contradictory positions in the future. *See* Fed. R. App. P. 46(c).

degrees and had a normal range of motion. Howell also testified that she could sit in a chair for only 5–10 minutes at a time, but Howell's physical therapist found that she had no limitations sitting for a sustained period of time and that she "prefers" to move around every hour.

"When objective medical evidence is inconsistent with a claimant's subjective testimony, an ALJ can reject the claimant's testimony about the severity of [her] symptoms only by offering specific, clear, and convincing reasons for doing so . . . ." *Kitchen*, 82 F.4th at 739 (omission in original) (quoting *Smartt*, 53 F.4th at 494). The ALJ did so here, explaining that Howell had "improvement with regard to the foot drop through physical therapy" and "relief from [back] pain with medical management and the use of heat or ice." The ALJ also noted that Howell "reported relief with medications and stretching exercises." Finally, the ALJ commented that Howell underwent a conservative treatment plan, explaining that she did not "want to try injection therapy but [would] continue with medications and other conservative modalities to manager her pain." These are all "specific, clear, and convincing reasons" for discrediting Howell's symptom testimony. *Id.*; *see also Para v. Astrue*, 481 F.3d 742, 751 ("We have previously indicated that evidence of conservative treatment is sufficient to discount a claimant's testimony regarding severity of an impairment.") (internal quotation marks omitted).

We note, however, that the ALJ erred in discrediting Howell's symptom testimony on the ground that it was inconsistent with her ability to perform certain daily activities. *See* 20 C.F.R. § 416.929(c)(3)(i). As the ALJ explained, Howell alleged to have muscle spasms, balance issues, the need for positional changes, mobility deficits, radiation with pain and numbness into her lower extremities, the need to use an assistive device, as well as difficulty lifting, squatting, bending, standing, reaching, walking, sitting, kneeling, and climbing stairs. According to the ALJ, these alleged symptoms were inconsistent with Howell's ability to perform "numerous tasks," including "watching TV, listening to music, meditating, . . . texting, video chatting, spending time with family, and living with friends." These tasks, however, are not "inconsistent" with Howell's alleged symptoms. *See Ferguson v. O'Malley*, 95 F.4th 1194, 1203 (9th Cir. 2024) ("Only if the level of activity [is] inconsistent with Claimant's claimed limitations do daily activities have any bearing on Claimant's credibility.") (alternation in original) (internal quotation marks and citations omitted). For example, Howell's ability to watch TV or listen to music has nothing to do with her back pain or need for positional changes.

Nevertheless, this error was harmless because substantial evidence supports the ALJ's determination that Howell's symptom testimony was inconsistent with the medical evidence in the record. *See Carmickle v. Commissioner*, 553 F.3d

1155, 1161 (9th Cir. 2008) ("Contradiction with the medical record is a sufficient basis for rejecting the claimant's subjective testimony.").

3. Howell argues that the ALJ erred in formulating her RFC because the ALJ erred in assessing the medical evidence and her testimony. Because we reject Howell's arguments that the ALJ erred in assessing this evidence, we likewise reject her argument as to the improper formulation of the RFC. *See Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175–76 (9th Cir. 2008). And because we find no error in the ALJ's RFC evaluation, substantial evidence supports the ALJ's step five findings. *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 886 (9th Cir. 2006) ("[I]n hypotheticals posed to a vocational expert, the ALJ must only include those limitations supported by substantial evidence.").

AFFIRMED.