Resurrecting The Treating Source Rule After Loper Bright: A Year of Limited Success

Tom Krause

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I. THE ALJ'S DUTY TO ARTICULATE THE DECISIONAL RATIONALE GENERALLY.

The 2017 Social Security Administration (SSA) regulations regarding the evaluation of medical opinion evidence represent an impermissible retreat from the longstanding requirement that Administrative Law Judges (ALJs) must articulate the basis for their decisions. These regulations, which eliminated the well-established Treating Source Rule, violate statutory mandates, contradict Supreme Court precedent, and undermine the principles of administrative adjudication that ensure meaningful judicial review and protect claimants' due process rights.

The obligation for ALJs to articulate their reasoning rests on multiple legal foundations. The Administrative Procedure Act (APA) requires that any agency decision include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. § 557(c)(3). This requirement specifically extends to "each finding, conclusion, or exception" presented by parties. 5 U.S.C. § 557(c)(3)(A).

Similarly, the Social Security Act requires any decision to "contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based." 42 U.S.C. §§ 405(b)(1), 1383(c)(1)(A). The Act also mandates that decisions be "supported by substantial evidence." 42 U.S.C. §§ 405(g), 1383(c)(3).

These statutory provisions unambiguously require ALJs to explain their reasoning on material issues, including their assessment of medical opinion evidence. The 2017 regulations undermine these mandates.

A. THE HISTORICAL DEVELOPMENT AND RATIONALE OF THE TREATING SOURCE RULE AND THE 1991 REGULATIONS.

The Treating Source Rule evolved from judicial recognition that treating physicians possess unique insights into claimants' conditions that consultative examiners or non-examining physicians cannot replicate. As established in *Hankerson v. Harris*, 636 F.2d 893 (2d Cir. 1980), "in the absence of substantial contradictory evidence, the opinion of the claimant's treating physician is binding on the Secretary [now the Commissioner]."

This principle was continuously reinforced and refined through judicial decisions. In *Harris v. Schweiker*, 560 F. Supp. 1298 (S.D.N.Y. 1983), the court emphasized that a treating physician's opinion "is binding on the fact-finder unless contradicted by substantial evidence." The longitudinal perspective of treating physicians was recognized as particularly valuable in *Ceballos v. Bowen*, 649 F. Supp. 693 (S.D.N.Y. 1986), which noted that even a conclusory report by a treating physician "presumably rests upon encapsulated experience with the subject."

The pivotal *Schisler* litigation led to the formal articulation of the rule. In *Schisler v. Heckler*, 787 F.2d 76 (2d Cir. 1986), the Second Circuit defined the treating physician rule as providing that a treating physician's opinion is: "(i) binding on the fact-finder unless contradicted by substantial evidence; and (ii) entitled to some extra weight because the treating physician is usually more familiar with a claimant's medical condition than other physicians."

After four years of considering public comments, the SSA published final regulations in 1991 that codified the Treating Source Rule, striking a balance between respect for medical expertise and the Commissioner's statutory

obligations. These regulations established that treating source opinions would be given "controlling weight" when "well-supported by medically acceptable clinical and laboratory diagnostic techniques and...not inconsistent with other substantial evidence." Standards for Consultative Examinations and Existing Medical Evidence, 56 FR 36932-01.

Crucially, the 1991 regulations required that when a treating source's opinion was not given controlling weight, the ALJ must provide "good reasons" for the weight accorded to the opinion. This articulation requirement ensured transparency, enabled meaningful judicial review, and protected claimants' due process rights.

B. THE SUPREME COURT'S CHENERY DOCTRINE AND THE REQUIREMENTS FOR ARTICULATION.

The Supreme Court established in *Sec. & Exch. Comm'n v. Chenery Corp.*, 318 U.S. 80, 87 (1943), that an agency's decision "must be upheld, if at all, on the same basis articulated in the order by the agency itself." The Court emphasized that a "judicial judgment cannot be made to do service for an administrative judgment" when an order depends on agency determinations not made.

This doctrine has been consistently reaffirmed. In *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971), *abrogated by Califano v. Sanders*, 430 U.S. 99 (1977), the Supreme Court reiterated that "*post hoc* rationalizations... have traditionally been found to be an inadequate basis for review." The Ninth Circuit recently affirmed this principle in *Stiffler v. O'Malley*, 102 F.4th 1102, 1106 (9th Cir. 2024).

Circuit courts have consistently held that ALJs must explain their reasoning when evaluating medical opinion evidence. In *Garrison v. Colvin*, 759 F.3d 995, 1012–13 (9th Cir. 2014), the Ninth Circuit stressed that ALJs must provide "specific and legitimate reasons" for rejecting a treating physician's opinion. In *Mascio v. Colvin*, 780 F.3d 632, 636 (4th Cir. 2015), the Fourth Circuit held that ALJs must "build an accurate and logical bridge from the evidence to their conclusion."

In *Hidalgo v. Bowen*, 822 F.2d 294, 297 (2d Cir. 1987), the Second Circuit observed that cases requiring reversal due to failure to apply the treating physician rule properly were "legion," collecting 23 cases where administrative decisions denying disability benefits had been reversed or remanded.

C. THE CRITICAL FUNCTIONS SERVED BY ARTICULATION REQUIREMENTS.

The requirement that ALJs articulate their reasoning serves several essential functions.

First, it enables meaningful judicial review. As explained in *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), a court must "be able to conclude that the agency has done its job" rather than substituting its judgment for that of the agency.

Second, articulation requirements protect due process rights. In *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), the Supreme Court recognized that "the right to be heard before being condemned to suffer grievous loss of any kind... is a principle basic to our society." Without an adequate explanation of how medical evidence was evaluated, claimants cannot meaningfully challenge adverse decisions.

Third, proper articulation ensures that decisions are supported by substantial evidence as required by 42 U.S.C. §§ 405(g) and 1383(c)(3). In *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488 (1951), the Supreme Court held that substantial evidence review "must take into account whatever in the record fairly detracts from its weight." Without a clear explanation of how an ALJ evaluated medical opinions, courts cannot determine whether the substantial evidence standard has been met.

D. THE 2017 REGULATIONS' IMPERMISSIBLE UNDERMINING OF ARTICULATION REQUIREMENTS.

The 2017 regulations eliminated the Treating Source Rule and severely weakened the articulation requirements previously in place. By no longer requiring ALJs to give "controlling weight" to treating source opinions that meet regulatory standards and failing to mandate "good reasons" for the weight given to such opinions, the regulations violate the statutory requirements of the APA and Social Security Act.

The 2017 regulations replace the hierarchical approach with a generalized consideration of "supportability" and "consistency," which fails to acknowledge the unique value of treating physicians' longitudinal perspective, contradicting

decades of judicial precedent that recognizes the special value of treating source opinions.

Most critically, by weakening articulation requirements, the regulations undermine the ability of courts to conduct meaningful judicial review, deny claimants due process, and create a system where disability determinations may fail the substantial evidence test without a proper explanation of how medical evidence was evaluated.

The 2017 SSA regulations about evaluating medical opinion evidence impermissibly undermine the statutory and common law requirements that ALJs articulate the basis for their decisions. They contravene the APA, the Social Security Act, Supreme Court precedent, and decades of circuit court decisions. By failing to require proper articulation, these regulations deny claimants due process, prevent meaningful judicial review, and undermine public confidence in administrative justice.

The regulations, therefore, violate 42 U.S.C. §§ 405(b)(1) and 405(g), 5 U.S.C. § 557(c) and (c)(3), and federal common law as established in Chenery and its progeny. Courts should reject these regulations as contrary to law and restore the articulation requirements that ensure transparency, fairness, and legitimacy in the evaluation of medical opinion evidence.

II. CLAIMS TO REINSTATE THE TREATING SOURCE RULE.

The Commissioner's regulations eliminating the treating source rule, 20 C.F.R. §§ 404.1520c and 416.920c, are arbitrary and capricious in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and 42 U.S.C. § 405(a) and 1383(d)(1). These regulations overturn decades of federal common law and regulatory precedent without adequate justification or consideration of the special role of treating sources in understanding their patients' limitations. *See Stieberger v. Bowen*, 801 F.2d 29, 31 (2d Cir. 1986) (noting development "through a series of decisions"). SSA also violated the APA, 5 U.S.C. § 702, and SSA, 42 U.S.C. §§ 405(a) and 1383(d)(1), by failing to adequately explain why the treating source rule was eliminated, failed to address critical concerns raised during the notice and comment, and could not consider the real-world impact of the rule change on disability claimants.

A. THE 2017 REGULATIONS UNDERMINE STATUTORY ARTICULATION REQUIREMENTS.

The Social Security Act and Administrative Procedure Act contain explicit requirements that ALJs articulate the basis for their decisions. The APA requires agency decisions to include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. § 557(c)(3). Similarly, the Social Security Act requires that decisions "contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based." 42 U.S.C. §§ 405(b)(1), 1383(c)(1)(A).

The 2017 regulations significantly weaken these articulation requirements by no longer requiring ALJs to provide "good reasons" for the weight given to treating source opinions. Instead, the regulations require articulation only on the factors of "supportability" and "consistency," while permitting cursory consideration of the remaining factors. This approach contradicts the statutory mandate for thorough articulation of the basis for decisions, particularly about critical medical evidence.

B. THE TREATING SOURCE RULE'S HISTORICAL DEVELOPMENT AND RATIONALE.

The Treating Source Rule emerged from judicial recognition that treating physicians possess unique insights into their patients' conditions. As the Second Circuit articulated in *Hankerson*, 636 F.2d at 896, "in the absence of substantial contradictory evidence, the opinion of the claimant's treating physician is binding on the Secretary [now the Commissioner]." This principle recognized that physicians who maintain ongoing treatment relationships develop specialized knowledge about their patients' functional limitations that consultative examiners or non-examining physicians cannot replicate. The principle was further refined in *Schisler*, 787 F.2d at 81, where the Second Circuit clarified that a treating physician's opinion is: "(i) binding on the fact-finder unless contradicted by substantial evidence; and (ii) entitled to some extra weight because the treating physician is usually more familiar with a claimant's medical condition than other physicians." *See Hidalgo*, 822 F.2d at 297 (collecting 23 cases where administrative decisions were reversed or remanded). This judicial consensus ultimately led to the 1991 regulatory codification of the rule, which remained in place for over 25 years.

In 1991, after four years of considering public comments, SSA published final regulations that codified the Treating Source Rule. The 1991 regulations required that when a treating source's medical opinion was not given controlling weight, the notice of determination or decision must provide "good reasons" for the weight given to the opinion. Standards for Consultative Examinations and Existing Medical Evidence, 56 FR 36932, 36941, 56 FR 36932-01, 36941. These articulation requirements served essential functions in the disability determination process:

1. They ensured transparency and accountability in administrative decision-making
2. They facilitated meaningful judicial review by clearly identifying the basis for evaluating medical evidence
3. They protected claimants' due process rights by explaining adverse determinations
4. They recognized and preserved the valuable insights of treating physicians derived from ongoing clinical relationships

C. THE 2017 REGULATIONS' DEFICIENCIES AND THEIR ARBITRARY NATURE.

The 2017 regulations abandoning the treating source rule suffer from multiple deficiencies that render them arbitrary and capricious under the APA standard articulated in *Motor Vehicle Mfrs. Ass'n of U.S., Inc.*, 463 U.S. at 43 (requiring agencies to "examine the relevant data and articulate a satisfactory explanation for its action").

SSA's primary justification for eliminating the treating source rule—changes in healthcare delivery—is factually inaccurate and legally insufficient. While SSA claimed that individuals "less frequently develop a sustained relationship with one treating physician" due to managed care, this assertion is not supported by the data. Even if generally true, this assertion contradicts reality for most disability claimants, who typically maintain long-term relationships with treating sources due to their chronic conditions.

Even if healthcare delivery has changed, SSA failed to explain why these changes justify abandoning the core principle that physicians who treat patients regularly have valuable insights into their conditions. The regulations assert, without supporting evidence, that "supportability" and "consistency" are "more objective measures" than the treating relationship. This conclusory reasoning

fails to acknowledge the unique clinical perspective that treating sources provide. If a claimant has a long-time treating source, that source's opinions should be given greater weight. SSA failed to justify eliminating the treating source rule for all just because it does not apply to all.

Rather than engaging substantively with these concerns, SSA summarily dismissed them, stating that "we are not retaining the treating source rule" due to changes in the healthcare industry. This cursory response fails to meet the APA's requirement for reasoned decision-making. It ignores the fundamental rationale for the treating source rule—the unique clinical insight gained through ongoing treatment relationships.

The 2017 regulations contradict the Social Security Act's requirement that the Commissioner provide "a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based." 42 U.S.C. § 405(b)(1). By weakening articulation requirements for treating source opinions, the regulations undermine this statutory mandate for transparent decision-making.

D. THE REAL-WORLD IMPACT ON DISABILITY CLAIMANTS.

SSA failed to adequately consider the real-world impact of eliminating the treating source rule on disability claimants. Without the requirement to give special weight to treating source opinions, ALJs are now free to rely more heavily on opinions from one-time consultative examiners or non-examining physicians who have never met the claimant. This shift disadvantages claimants in several ways:

1. It devalues the insights of medical professionals who best understand claimants' conditions through ongoing treatment relationships
2. It gives undue weight to cursory consultative examinations that cannot capture the longitudinal effects of impairments
3. It fails to account for the reality that treating physicians often have the most comprehensive understanding of how impairments affect functioning in real-world settings
4. It increases the risk that ALJs will substitute their lay judgment for medical expertise, precisely what courts have consistently prohibited

The 2017 regulations eliminating the treating source rule represent an arbitrary and capricious departure from decades of established precedent without adequate justification. They undermine statutory requirements for articulation, disregard Supreme Court precedent on agency decision-making, and fail to consider the real-world impact on disability claimants.

The regulations should be vacated, and the treating source rule reinstated, to ensure that ALJs properly articulate the basis for their decisions about medical opinion evidence. Only by requiring "good reasons" for the weight given to treating source opinions can the system ensure transparency, accountability, and fairness in disability determinations.

III. LEGAL ARGUMENT CHALLENGING THE 2017 SSA REGULATIONS ON EVALUATION OF VA RATINGS DECISIONS AND OTHER AGENCY DECISIONS

The 2017 Social Security Administration (SSA) regulations about the evaluation of decisions from other governmental agencies represent an arbitrary and capricious departure from established law and practice. These regulations explicitly state that SSA "will not provide any analysis in our determination or decision about a decision made by any other governmental agency or a nongovernmental entity about whether you are disabled, blind, employable, or entitled to any benefits." 20 C.F.R. §§ 404.1504, 416.904. This approach directly contradicts the statutory mandate to consider all available evidence and the requirement that Administrative Law Judges (ALJs) articulate the basis for their decisions.

A. THE PRACTICAL IMPORTANCE OF VA DISABILITY RATINGS.

VA disability ratings hold particular significance for several reasons:

> **Comprehensive Medical Evaluation**: VA ratings are based on thorough medical examinations by qualified professionals, often reflecting years of medical records and multiple specialist opinions.
>
> **Similar Disability Standards**: The courts have noted that while not identical, both VA and SSA disability determinations assess functional limitations resulting from

medical conditions. The VA's percentage ratings provide valuable insight into the severity of conditions.

Particular Relevance for Veterans: For the population of veterans applying for Social Security disability benefits, VA ratings often represent the most detailed and longitudinal assessment of their impairments.

Consistency in Federal Policy: As noted in *Bird v. Comm'r of Soc. Sec. Admin.*, 699 F.3d 337, 343 (4th Cir. 2012), both programs serve the same governmental purpose of providing benefits to persons unable to work due to disability.

By eliminating requirements to articulate consideration of VA ratings, the 2017 regulations create a significant gap in the evidentiary record and undermine the ability of reviewing courts to determine whether substantial evidence supports the ALJ's decision.

B. HISTORICAL TREATMENT OF VA DISABILITY RATINGS REVEAL HOW THE COURTS INTERPRET THE STATUTE.

In Social Security Ruling (SSR) 06-03p, SSA explicitly acknowledged that "evidence of a disability decision by another governmental or non-governmental agency cannot be ignored and must be considered." The ruling further stated that "the adjudicator should explain the consideration given to these decisions in the notice of decision." Digging deeper, this policy is rooted in the judicial interpretation of the law, an interpretation that regulations cannot overcome. Before the 2017 regulations, SSA policy and federal court decisions consistently recognized the importance of VA disability ratings. This judicial standard is based on the substantial evidence standard in 42 U.S.C. § 405(g) and the articulation requirements of 42 U.S.C. § 405(b)(1) and 5 U.S.C. § 557(c).

Federal courts have long held that VA disability ratings deserve significant consideration. In *McCartey v. Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002), the Ninth Circuit held that "the ALJ must ordinarily give great weight to a VA determination of disability." The court emphasized that the VA rating deserved this weight because it resulted from "a comprehensive evaluation based on medical examinations by medical professionals."

In *Bird*, 699 F.3d at 343, the Fourth Circuit held that "in making a disability determination, SSA must give substantial weight to a VA disability rating." The court noted that "both the VA and Social Security programs serve the same governmental purpose of providing benefits to persons unable to work because of a serious disability."

Other circuits have adopted similar approaches. The Tenth Circuit in *Grogan v. Barnhart*, 399 F.3d 1257, 1262 (10th Cir. 2005), held that "the VA's disability determination is relevant evidence that the ALJ must consider and explain why he did not find it persuasive." The Fifth Circuit in *Chambliss v. Massanari*, 269 F.3d 520, 522 (5th Cir. 2001), required ALJs to give "great weight" to VA disability determinations. The Eighth Circuit agreed with other courts that findings of disability by other federal agencies, even though they are not binding on an ALJ, are entitled to some weight and must be considered in the ALJ's decision. *Morrison v. Apfel*, 146 F.3d 625, 628 (8th Cir. 1998); *see Fowler v. Califano*, 596 F.2d 600, 603 (3d Cir. 1979).

C. THE 2017 REGULATIONS ARE ARBITRARY AND CAPRICIOUS.

The 2017 regulations are arbitrary and capricious under the standard established in *Motor Vehicle Mfrs. Ass'n of U.S., Inc.*, 463 U.S. at 43, which requires agencies to "examine the relevant data and articulate a satisfactory explanation for its action." SSA's explanation for eliminating articulation requirements regarding other agency decisions falls well short of this standard.

SSA provided four reasons for eliminating articulation requirements: (1) different purpose and eligibility requirements across programs; (2) potential lack of explanation in other agency decisions; (3) lack of SSA adjudicator understanding of other agencies' rules; and (4) varying judicial interpretations of Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 FR 5844, 5849, 82 FR 5844-01, 5849.

These justifications fail to provide a rational connection between the facts found and the choice made. The fact that programs have different eligibility requirements explains why another agency's determination is not binding, but not why SSA should not articulate how it considered that determination. That adjudicators may not understand another agency's rules suggests a need for better training, not the elimination of articulation requirements.

D. FAILURE TO RESPOND ADEQUATELY TO PUBLIC COMMENTS.

The Final Rule acknowledges that "some commenters disagreed with our proposal not to provide analysis about decisions by other governmental agencies and nongovernmental entities in our decisions and determinations." Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 FR 5844, 5848, 82 FR 5844-01, 5848. Some commenters specifically noted that "these decisions are important evidence that we should always discuss because the rules or purposes of other disability programs are similar to our programs."

SSA's response dismisses these concerns without adequate engagement, merely reiterating its initial rationales. This fails to meet the APA's requirement for reasoned decision-making in response to significant comments.

E. IMPACT ON JUDICIAL REVIEW AND DUE PROCESS.

The 2017 regulations significantly impair both judicial review and claimants' due process rights:

Obstruction of Meaningful Judicial Review: Without articulation of how VA ratings were considered, courts cannot determine whether substantial evidence supports the ALJ's decision. This directly contradicts the Supreme Court's instruction in *Universal Camera Corp.*, 340 U.S. at 488, that substantial evidence review "must take into account whatever in the record fairly detracts from its weight."

Denial of Due Process: As established in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), "the right to be heard before being condemned to suffer grievous loss of any kind... is a principle basic to our society." Without an explanation of how their VA rating was considered, claimants cannot meaningfully challenge adverse determinations.

Creation of "Black Box" Decision-Making: By allowing ALJs to disregard VA ratings without explanation, the regulations create an opaque process that shields administrative decisions from proper scrutiny.

The 2017 SSA regulations about the evaluation of other agency determinations, particularly VA disability ratings, impermissibly undermine the statutory and common law requirements that ALJs articulate the basis for their

decisions. They contravene the APA, the Social Security Act, Supreme Court precedent, and decades of circuit court decisions requiring proper consideration and articulation of VA disability ratings.

By failing to require proper articulation, these regulations deny claimants due process, prevent meaningful judicial review, and undermine public confidence in administrative justice. The rules should be vacated as arbitrary and capricious under 5 U.S.C. § 706(2)(A), and SSA must promulgate new regulations that comply with the statutory mandate to consider all evidence and articulate the reasons for its determinations.

IV. THE 2017 SSA REGULATIONS IMPROPERLY DIMINISH ARTICULATION REQUIREMENTS FOR EVIDENCE FROM OTHER MEDICAL SOURCES

The 2017 Social Security Administration (SSA) regulations about the evaluation of evidence from "other medical sources" impermissibly undermine Administrative Law Judges' (ALJs) obligation to articulate the bases for their decisions. These regulations arbitrarily diminish the evidentiary value of opinions from sources such as nurse practitioners, physician assistants, and licensed clinical social workers without adequate justification, violating statutory mandates, contradicting established case law, and undermining principles of administrative justice that ensure meaningful judicial review and protect claimants' due process rights.

A. STATUTORY REQUIREMENTS FOR ARTICULATION OF DECISION RATIONALES.

The obligation for ALJs to articulate their reasoning when evaluating all medical evidence, including evidence from "other medical sources," is firmly grounded in statutory law. The Administrative Procedure Act (APA) requires that agency decisions include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. § 557(c)(3). This requirement extends to "each finding, conclusion, or exception" presented by parties, unambiguously requiring ALJs to explain their reasoning regarding all material evidence.

Similarly, the Social Security Act mandates that decisions "contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based." 42 U.S.C. §§ 405(b)(1), 1383(c)(1)(A). These

statutory provisions create a clear legal requirement for ALJs to explain their evaluation of all medical evidence, regardless of source.

B. THE EVOLUTION OF "OTHER MEDICAL SOURCES" IN DISABILITY DETERMINATIONS.

Historically, SSA distinguished between "acceptable medical sources" (primarily physicians and psychologists) and "other sources" (including nurse practitioners, physician assistants, and licensed clinical social workers). While "acceptable medical sources" had to establish the existence of a medically determinable impairment, evidence from "other sources" was increasingly recognized as valuable for understanding severity and functional limitations.

Courts consistently recognized the importance of properly evaluating and articulating consideration of evidence from "other medical sources." In *Frantz v. Astrue*, 509 F.3d 1299, 1301–02 (10th Cir. 2007), the court held that an ALJ must consider evidence from other sources and "explain the weight given to opinions from these 'other sources,' or otherwise ensure that the discussion of the evidence in the determination or decision allows a claimant or subsequent reviewer to follow the adjudicator's reasoning."

In *Canales v. Comm'r of Soc. Sec.*, 698 F. Supp. 2d 335, 344 (E.D.N.Y. 2010), the court emphasized that "the ALJ has a duty to properly evaluate the evidence and explain the weight accorded to the evidence considered," including evidence from other medical sources such as nurse practitioners.

SSA itself recognized the evolving healthcare landscape in SSR 06-03p, acknowledging that "with the growth of managed health care in recent years and the emphasis on containing medical costs, medical sources who are not 'acceptable medical sources,' such as nurse practitioners, physician assistants, and licensed clinical social workers, have increasingly assumed a greater percentage of the treatment and evaluation functions previously handled primarily by physicians and psychologists."

C. THE 2017 REGULATIONS' FLAWED APPROACH TO OTHER MEDICAL SOURCES.

The 2017 regulations significantly changed the evaluation of evidence from other medical sources. While expanding the definition of "acceptable medical sources" to include advanced practice registered nurses, physician assistants, and

audiologists for claims filed after March 27, 2017, the regulations simultaneously weakened articulation requirements regarding how this evidence is considered.

The regulations adopt a flawed approach in several respects:

Inconsistent Recognition of Healthcare Evolution: While acknowledging that healthcare delivery has changed with "individuals receiv[ing] health care from multiple medical sources" (Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 FR 5844-01), SSA inexplicably failed to extend recognition to many other healthcare providers who increasingly provide primary care, particularly for low-income and rural populations.
Inadequate Response to Public Comments: As documented in the Final Rule, numerous commenters "supported recognizing LCSWs as AMSs, and they suggested we also add a wide variety of other medical sources" (Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 FR 5844, 5847, 82 FR 5844-01, 5847). SSA dismissed these recommendations without sufficient justification, claiming it "did not find a similar level of consistency or rigor in terms of education, training, certification, and scope of practice," despite extensive evidence submitted by commenters about the qualifications of these providers.
Weakened Articulation Requirements: Despite expanding the acceptable medical source list, the regulations diminish the articulation requirements for how evidence from "other sources" is considered, merely requiring that ALJs "consider" such evidence without meaningful standards for explaining how it affects their decisions.

D. THE CENTRAL ROLE OF ARTICULATION IN ADMINISTRATIVE JUSTICE.

The requirement for ALJs to articulate their reasoning when evaluating all medical evidence serves several essential functions undermined by the 2017 regulations:

As established in *Securities and Exchange Commission*, 318 U.S. at 87, an agency's decision "must be upheld, if at all, on the same basis articulated in the order by the agency itself." Without adequate articulation of how evidence from other medical sources is evaluated, courts cannot correctly determine whether substantial evidence supports the ALJ's decision.

In *Citizens to Preserve Overton Park, Inc.*, 401 U.S. 402, it was emphasized that "post hoc rationalizations... have traditionally been found to be an inadequate basis for review." *Citizens to Preserve Overton Park, Inc.*, 401 U.S. at 420. The 2017 regulations' weak articulation requirements invite this type of impermissible post-hoc rationalization.

In *Mathews*, 424 U.S. 319, the Supreme Court recognized that "the right to be heard before being condemned to suffer grievous loss of any kind... is a principle basic to our society." *Mathews*, 424 U.S. at 333. Without a clear explanation of how evidence from other medical sources is evaluated, claimants cannot meaningfully challenge adverse determinations, violating due process principles.

Under 42 U.S.C. §§ 405(g) and 1383(c)(3), judicial review must determine whether the Commissioner's findings are supported by "substantial evidence." As the Supreme Court held in *Universal Camera Corp.*, 340 U.S. 474, substantial evidence review "must take into account whatever in the record fairly detracts from its weight." *Universal Camera Corp.*, 340 U.S. at 488. Without proper articulation of how evidence from other medical sources is considered, courts cannot properly conduct this review.

E. THE ARBITRARY AND CAPRICIOUS NATURE OF THE 2017 REGULATIONS.

The 2017 regulations are arbitrary and capricious under the standard established in *Motor Vehicle Mfrs. Ass'n of U.S., Inc.*, 463 U.S. 29, which requires agencies to "examine the relevant data and articulate a satisfactory explanation for its action." *Motor Vehicle Mfrs. Ass'n of U.S., Inc.*, 463 U.S. at 43.

A. Failure to Adequately Consider Modern Healthcare Realities

SSA failed to adequately consider the reality that many disability claimants, particularly those from disadvantaged backgrounds, receive most of their healthcare from providers classified as "other medical sources." By diminishing articulation requirements for these sources, the regulations disproportionately harm the most vulnerable claimants. This disregards SSA's recognition in SSR 06-03p that such sources "have increasingly assumed a greater percentage of the treatment and evaluation functions previously handled primarily by physicians and psychologists."

B. Inadequate Response to Public Comments

Multiple commenters highlighted the importance of properly considering and articulating the evaluation of evidence from other medical sources. SSA's response it would "continue to monitor licensure requirements for the medical sources the commenters suggested" (Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 FR 5844, 5847, 82 FR 5844-01, 5847) fails to address the immediate harm to claimants whose medical evidence comes primarily from these sources.

C. Internal Inconsistency

The regulations are internally inconsistent in acknowledging the changing healthcare landscape while failing to adapt their articulation requirements to this reality adequately. SSA recognized that "individuals may obtain evaluation, examination, or treatment from medical sources who are not Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 FR 5844, 5859, 82 FR 5844-01, 5859), yet failed to require meaningful articulation of how such evidence is evaluated.

F. THE PRACTICAL IMPACT ON DISABILITY CLAIMANTS.

The 2017 regulations have severe practical consequences for disability claimants:

They disadvantage claimants who receive care primarily from providers not recognized as "acceptable medical sources" due to geographic, economic, or insurance limitations.

They permit ALJs to dismiss potentially probative evidence from other medical sources without adequate explanation.

They undermine accountability by allowing ALJs to avoid explaining how they evaluated evidence that may be pivotal to understanding a claimant's functional limitations.

They create a two-tiered system where claimants with access to "acceptable medical sources" receive more thorough consideration of their evidence than those who must rely on other providers.

The 2017 SSA regulations about the evaluation of evidence from other medical sources impermissibly undermine ALJs' obligation to articulate the bases for their decisions. By weakening articulation requirements for evidence from sources that provide critical care to many disability claimants, the regulations violate statutory mandates, contradict established case law, and undermine principles of administrative justice.

To restore proper articulation requirements and ensure claimants receive fair consideration of all their medical evidence, the regulations should be vacated and replaced with standards that require ALJs to explain how they evaluate evidence from all medical sources properly. Only with such articulation can claimants' due process rights be protected and meaningful judicial review be ensured.

V. RESURRECTION OF THE TREATING SOURCE RULE AFTER LOPER BRIGHT.

Chevron deference, established in *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), *overruled by* *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), was a foundational doctrine of administrative law that required federal courts to defer to an agency's reasonable interpretation of an ambiguous statute that the agency was charged with administering. Under this two-step framework, courts would first determine whether Congress had directly addressed the precise question. If the statute was silent or ambiguous on the specific issue, courts would defer to the agency's interpretation if it was based on a permissible construction of the statute. This doctrine significantly empowered federal agencies by allowing them considerable latitude in interpreting the statutes they implemented, effectively making agency expertise and policy judgments paramount over independent judicial interpretation of statutory language. However, the Supreme Court overruled *Chevron* in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024), declaring that courts must now exercise independent judgment in determining the meaning of statutory provisions and can no longer defer to agency interpretations, even while preserving the validity of prior decisions that had relied on the *Chevron* framework under principles of *stare decisis*.

The Supreme Court's decision in *Loper Bright Enterprises*, 603 U.S. 369. This doctrinal shift has significant implications for the validity of the Social Security Administration's 2017 regulations, which eliminated the treating source rule; however, the immediate practical impact appears to be more limited than initially anticipated.

The *Loper Bright Enterprises*, 603 U.S. 369 decision established that courts must now exercise independent judgment when reviewing an agency's interpretations of statutes, rather than deferring to the agency's expertise. However, the Supreme Court explicitly stated this change in interpretive methodology does not call into question prior cases that relied on the *Chevron* framework, noting that the holdings of those cases remain subject to statutory *stare decisis* despite the change in approach. *Loper Bright Enterprises*, 603 U.S. at 412. This preservation of existing precedent has proven crucial in the social security context.

The 2017 regulations eliminated the treating source rule's hierarchical approach and weakened articulation requirements by no longer requiring controlling weight for qualifying treating source opinions and failing to mandate good reasons for weight determinations. This regulatory change replaced the established framework with generalized consideration of supportability and consistency, which fail to acknowledge the unique value of treating physicians' longitudinal perspectives and contradict decades of judicial precedent recognizing the special value of treating source opinions.

Despite these theoretical challenges, the practical impact of *Loper Bright* on social security law has been minimal. Federal courts have consistently rejected post-*Loper Bright* challenges to the validity of the 2017 regulations. The Ninth Circuit's decision in *Cross v. O'Malley*, 89 F.4th 1211 (9th Cir. 2024), held that the Social Security Act "plainly encompassed the Commissioner's authority to adopt regulations to govern the weighing of medical evidence," concluding this without deferring to the agency's interpretation. The court emphasized this holding was based on statutory text rather than *Chevron* deference, making it immune to *Loper Bright*'s impact.

Subsequent decisions have uniformly followed this approach. In *Williams v. O'Malley*, No. 23-35358, 2024 WL 3519774, at *1 (9th Cir. July 24, 2024), the Ninth Circuit explicitly stated that "*Loper* does not undercut *Cross*," noting that the Social Security Act grants the Commissioner broad authority to regulate medical evidence evaluation. District courts across multiple circuits have reached similar conclusions. In *Kimberly M. v. Comm'r of Soc. Sec.*, No. 1:24-CV-527, 2025 WL 449429, at *4 (W.D. Mich. Jan. 8, 2025), *report and recommendation adopted sub nom. Messenger v. Comm'r of Soc. Sec.*, No. 1:24-CV-527, 2025 WL 448784 (W.D. Mich. Feb. 10, 2025), the court found that the 2017 regulations "remain good law even with *Chevron* overruled" because "nothing in the Act specifies how treating-

physician evidence is to be weighed or requires the treating-physician rule." In *Thomas v. Comm'r of Soc. Sec.*, No. 3:23-CV-1243-SJH, 2024 WL 4764465, at *3 (M.D. Fla. Nov. 13, 2024), the court concluded that the 2017 regulations remain valid, and in *Hicks v. Comm'r of Soc. Sec. Admin.*, No. 7:23-CV-70-REW, 2024 WL 3901190, at *2 (E.D. Ky. Aug. 19, 2024), the court noted that "social security cases post-dating *Loper* have afforded the same level of deference to the Agency."

The Eleventh Circuit's approach in *Harner v. Soc. Sec. Admin., Comm'r*, 38 F.4th 892 (11th Cir. 2022), illustrates the continued validity of pre-*Loper Bright* precedent. In *Childress v. King*, No. 4:21-CV-237-CLS, 2025 WL 540092, at *5 (N.D. Ala. Feb. 18, 2025), the court noted that even though *Harner* relied upon *Chevron* to uphold the 2017 regulations, the decision remains binding because "*Loper Bright* do[es] not call into question prior cases that were decided by the *Chevron* framework."

Courts have also noted that many challenges to the 2017 regulations have been procedurally deficient. In *Andrewphillip E. v. Dudek*, No. 24CV108-LR, 2025 WL 874788, at *11–12 (S.D. Cal. Mar. 20, 2025), the court emphasized that "the mere existence of a court's decision is insufficient to put an opposing party on notice of a party's claim involving that decision," rejecting arguments raised for the first time after *Loper Bright*'s publication. In *Apple v. Bisignano*, No. 24-307, 2025 WL 1525314, at *1 (9th Cir. May 29, 2025), the court found that the claimant "waived his argument that *Loper Bright Enterprises v. Raimondo*...undermines the validity of the 2017 regulations by raising the contention only in his reply brief."

Even when courts have exercised discretion to address these arguments substantively, they have consistently concluded that *Loper Bright* does not alter the regulatory landscape in social security cases. In *Michael L. v. Colvin*, No. 3:23-CV-01967-CAB-VET, 2025 WL 332565, at *6 (S.D. Cal. Jan. 28, 2025), *report and recommendation adopted,* No. 23CV1967-CAB-VET, 2025 WL 525106 (S.D. Cal. Feb. 18, 2025), the court noted that *Barnhart v. Thomas*, 540 U.S. 20 (2003), which relied on *Chevron* deference, remains valid because the Supreme Court "did not overrule prior decisions that relied on the *Chevron* framework." Multiple district courts in Oregon have consistently applied this reasoning, finding in cases such as *DEVAN G., Plaintiff, v. COMMISSIONER SOCIAL SECURITY ADMINISTRATION, Defendant.*, No. 6:24-CV-00660-SB, 2025 WL 1640176, at *6 (D. Or. June 10, 2025), *Alan M. v. Comm'r Soc. Sec. Admin.*, No. 6:24-CV-00784-SB, 2025 WL 926590, at *7 (D. Or. Mar. 27, 2025), *Maria W. v. Comm'r, Soc. Sec. Admin.*, No. 6:24-CV-1266-SB, 2025 WL 1540866, at *2 (D. Or. May 30, 2025), and *Corwin*

H. v. Comm'r of Soc. Sec., No. 6:24-CV-00149-SB, 2025 WL 1204427, at *6 (D. Or. Apr. 25, 2025), that "*Loper* does not undercut *Cross*."

The continued validity of the 2017 regulations post-*Loper Bright* reflects a fundamental distinction between regulations that rest on apparent statutory authority and those that depend primarily on agency interpretation of ambiguous statutory language. While *Loper Bright* eliminates deference to agency interpretations, it does not diminish agencies' authority to adopt regulations when Congress has granted such authority. In the Social Security context, courts have consistently found that the Social Security Act provides explicit authority for the Commissioner to regulate the evaluation of medical evidence, rendering *Chevron* deference unnecessary for upholding the 2017 regulations.

Some judges have begun to question other aspects of social security law, given *Loper Bright*'s emphasis on independent judicial interpretation. In *Ginder v. Comm'r of Soc. Sec.*, No. 24-2098, 2025 WL 323095, at *3 (3d Cir. Jan. 29, 2025), Judge Porter's concurrence questioned whether obesity qualifies as a disability under the statutory definition, noting that *Loper Bright* requires courts to "exercise [their] independent judgment" and focus on statutory text rather than deferring to agency interpretations.

This judicial consensus suggests that while *Loper Bright* represents a significant shift in administrative law methodology, its practical impact on established regulatory frameworks may be more limited than initially anticipated, particularly where agencies can point to clear statutory authority for their regulatory choices. The social security context thus illustrates how the post-*Loper Bright* landscape may preserve existing regulatory structures while requiring more rigorous attention to statutory text in future regulatory development.

Where do we stand? Articulation generally is a strong argument – Logical Bridge. No TPR challenge in the Ninth. Still possible in the Second, maybe others. Perhaps a VA Ratings challenge; other agency decisions (non-VA) may be a tougher sell.

The tension between the theoretical critique of the 2017 regulations and their continued judicial acceptance highlights the complex interplay between statutory interpretation, administrative authority, and procedural requirements in the modern administrative state. While critics argue that the regulations violate principles of administrative adjudication and due process by

undermining articulation requirements established in cases like *Chenery*, *State Farm*, and *Mathews*, 424 U.S. 319, courts have consistently found sufficient statutory authority to support the Commissioner's regulatory approach, suggesting that challenges to these regulations may require legislative rather than judicial solutions.