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S. Hrg. 112–800

SOCIAL SECURITY DISABILITY PROGRAMS: IMPROVING THE QUALITY OF BENEFIT AWARD DECISIONS

HEARING

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

SEPTEMBER 13, 2012

Available via the World Wide Web: http://www.fdsys.gov

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Committee on Homeland Security and Governmental Affairs

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SOCIAL SECURITY DISABILITY PROGRAMS: IMPROVING THE QUALITY OF BENEFIT AWARD DECISIONS

THURSDAY, SEPTEMBER 13, 2012

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:33 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Carl Levin, Chairman of the Subcommittee, presiding.

Present: Senators Levin, Coburn, and Collins.

Staff Present: Elise J. Bean, Staff Director and Chief Counsel; Mary D. Robertson, Chief Clerk; Daniel J. Goshorn, Counsel; Brian Egger, Detailee (GAO); Christopher Barkley, Staff Director to the Minority; Andrew Dockham, Counsel to the Minority; Kathryn Edelman, Detailee (GAO); and Priscilla Hanley (Senator Collins).

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Good morning, everybody. The Subcommittee meets this morning to look at our Social Security Disability Insurance (SSDI) program. This program provides financial support to Americans who, due to a disability, are incapable of working at a full-time job. The number of individuals applying for disability insurance aid has been increasing in recent years, made worse by the 2008 financial crisis when millions of workers lost their jobs and their employer-sponsored health insurance. Without health insurance, many of those individuals could not afford to pay for health care. Without health care, chronic conditions held in check by medicine and treatment worsened and sometimes became disabling. Those workers then turned to Federal disability insurance.

More individuals receiving disability insurance payments has, in turn, increased the stress on the Social Security Disability Trust Fund. Recent estimates predict that the trust fund may be unable to pay full benefits by 2016, a problem that this country has a moral obligation to address.

Another problem is how long the disability application process takes. Applicants can wait 2 years to get a hearing and even longer for their case to be decided. During that years-long wait, claimants often have less access to medical care or medicines. Although the Social Security Administration (SSA) has recently reduced the

backlog, large numbers of our most vulnerable citizens are still waiting in long lines.

While there are many concerns about Social Security disability programs, including exhaustion of the trust fund and the backlog, today's hearing focuses on another set of concerns: what happens when an individual finally gets to the front of the line and gets their case heard. At the request of Dr. Coburn, the Ranking Republican on our Subcommittee, we launched a bipartisan investigation into how decisions are made to award disability benefits. After receiving actual case files from three counties in three different States, with all personal information removed, the files were reviewed to see how they were being decided, at both the initial and appellate levels. The review examined only cases in which benefits were awarded and not any cases in which benefits were denied.

A number of troubling problems appeared. One judge who churned out over 1,500 cases per year took inappropriate shortcuts in his opinions, cutting and pasting medical evidence from the case file into his opinions without explaining or analyzing what it meant, and writing the phrase "etc, etc, etc" rather than describing the relevant evidence. His chief judge confronted him in person and by letter, but for years he turned out the same poor-quality work.

In other cases that were reviewed, judges held perfunctory hearings that lasted less than 5 minutes, failed to elicit any testimony from the person applying for benefits, or failed to examine medical evidence raising questions about whether that person was entitled to disability benefits. In still other cases, poorly written opinions awarding benefits failed to identify medical evidence showing how the requirements for establishing a disability were met, did not acknowledge or address evidence that impairments were not disabling or evidence that the claimant had been working, and at times even misreported medical findings or hearing testimony.

The report's findings of a large number of poor-quality decisions in the 300 case files reviewed are consistent with the Social Security Administration's own internal research. A Social Security Administration quality review process found that, in 2011, 22 percent or over 1 in 5 disability cases decided by administrative law judges contained errors or were inadequately justified. Those errors went in both directions, awarding and denying benefits. Those errors and inadequacies did not mean that the 1 in 5 disability decisions were all wrongly decided. What they meant was that the opinions being produced in those cases did not contain the type of analysis needed to be confident that the cases were correctly decided and that disability benefits go only to the truly disabled.

Senator Coburn is releasing a report that describes the results of the investigation into the disability decisionmaking process. That report, in a unique way, provides detailed, relevant information about a process that is closed to the public, and necessarily so, since disability hearings discuss an individual's personal medical records. The report not only confirms the Social Security Administration's own findings; it demonstrates what is at stake. It identifies important issues illustrating how the quality of disability benefit award decisions must be improved, and it also shows why oversight by the Social Security Administration and by Congress is so critically important.

The report also contains many recommendations with which I agree, including expanding the Social Security Administration's quality review process; closing the evidentiary record at a reasonable time before a hearing to ensure adequate time to review materials; updating the decades-old job list; and increasing training for the judges.

I do have a significant concern about a key recommendation to mandate a government representative at all disability hearings because I fear that it would lead to an adversarial process. The Supreme Court has said that the Social Security Act calls for the agency to operate "as an adjudicator, and not as an advocate or adversary." That is a central principle of the disability system, and if the proposed government representative is not to advocate for a particular position before the administrative law judge, it would then seem to be an expensive and a time-consuming duplication or a confusion of roles.

The men and women who administer the Social Security disability programs do not have it easy. The plight of the disabled demands that they do their jobs quickly, given the backlog. The law requires them to navigate complex rules and to make difficult judgments. The threat to the program's solvency hovers over everything. I hope that the work of the Subcommittee will contribute to the ongoing efforts to improve the disability award process, and I look forward to the testimony of our witnesses today.

I now turn to my friend, the Ranking Republican Senator Coburn, Dr. Coburn, for his opening statement, and I want to thank him for the extensive work that he and his hard-working staff put into this important effort. Dr. Coburn.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Thank you, Mr. Chairman, and I thank those that are going to testify before us today. I want to thank you for holding the hearing and especially your staff. In a Congress that is often divided on partisan issues, this is a unique Committee. The staffs work in parallel. We actually compromise. We work to find common ground to solve real problem. Without Chairman Levin's support, we would not have been able to undertake this investigation.

We are here to discuss this report which really looks at how Social Security approves claims for both the SSDI and SSI systems. Both of those are critical promises to people in our country that have, not through their own means, acquired disabilities that requires that they can no longer achieve what they would like to achieve on their own through their own means.

The Congressional Budget Office has been clear that the disability programs are teetering on bankruptcy. If you actually look at their recommendations over the last 5 years, you see we are coming closer and closer and closer. We are losing a year almost every year in terms of the time of insolvency.

The Social Security Trustees have concluded that the disability insurance program may go bankrupt in 2015, and that is because the rolls have grown faster than anticipated. That is completely understandable given our financial experience over the past 4 years in this country and the fact that people who were truly disabled

were still working because they had the benefits and the wherewithal to continue to do that. Losing health insurance through layoffs is one of the reasons that people who were disabled but were still working have increased in the number of applications.

Since January 2009, the Social Security Administration has added 5.9 million Americans to the disability rolls. That is about 78,000 per month. That is 14,000 more added to the disability rolls than we actually created in terms of jobs.

With the trust funds approaching insolvency and the law saying that the funds to provide SSDI come from the revenues that come into SSDI, Congress is handicapped in terms of supplementing that, which means that anyone who is collecting disability that should not be collecting disability will ultimately be taking funds from those people who actually deserve disability once the trust fund reaches its insolvent point.

Millions of our neighbors depend on these programs to replace a portion of the income they earned before they became disabled. For many of them, this is a lifeline without which they would be absolutely overwhelmed.

For the past 18 months, this Subcommittee has conducted a bipartisan investigation into how well the Social Security Administration is running these programs. Our hope is that where we find problems, we might also offer solutions.

We decided to take a look at a random selection of 300 case files, all of which came from three counties and represented a broad mix of disability applicants.

We carefully chose three areas of the country that had different concentrations of people receiving disability benefits—from a very high to a very low to a mid range. We worked closely with the Social Security Administration to develop a methodology that would give meaningful results.

One of the places we looked at was Oklahoma City in my own home State. It was and is my firm belief that if Congress is going to get serious about reforming our government, oversight must start at home. Unfortunately, some of the worst problems we saw were in my home State.

The good news is that Oklahoma is also home to a disability success story. The Oklahoma Department of Rehabilitation Services is helping set individuals on disability back into the work force to become productive, self-sufficient Americans. One individual there, Jason Price, developed a system of giving monetary incentives to vocational rehabilitation counselors who found work for disability recipients through the Ticket to Work program. Thousands of people who were disabled are now working in Oklahoma, and nearly 1,100 of those no longer are on SSDI.

In 2010 alone, Price's initiatives resulted in 135 individuals who were severely disabled going back to work, ending their dependence on disability payments. The State recouped over $2.3 million. I am proud of his work, and I hope his example will be shown to other States to see how to get even the very severely disabled back into the workforce.

Let me tell you why that is important. When somebody is deemed disabled and we help them through the Social Security disability system, we are actually accomplishing one of the intents

that we intend to. Our compassion becomes real. When somebody collects disability that is not truly disabled, we actually harm them. We limit their potential. We limit their ability to go through a program like Jason Price has developed to actually give them real meaning and to perceive their real worth in our society.

To understand the problems we uncovered, it is important to explain how someone gets disability benefits. The first step is that a person applies at his or her Social Security office. They are eligible for benefits starting the day their disability began, not simply on the date that they made application. To support their claim, they can submit medical records if they have them. If they do not have medical record, the agency, the Social Security Administration, will pay for them to get a consultative exam. This forms SSA's basis of evaluating someone's initial claim.

The local office does not make the initial decisions. Rather, this is done at the State-level Disability Determination Service, or DDS. There is one DDS office in every State, and that is where nearly 2.5 million applications are first dealt with each year, and 33 to 35 percent of those applications are approved.

If it is denied at the DDS level, a person can ask for a different—have a second set of doctors take a second look, called a "reconsideration." If it is denied again, the person can appeal once more to request a hearing before an administrative law judge. Then that is the point that Senator Levin made. That is where our big backup is, at the administrative law judge level.

At this level, a claimant's case is supposed to get a fresh review by an impartial judge who has independence to decide cases on their merits and the record. They are not bound by any prior DDS decisions. Social Security has over 1,300 administrative law judges who handle the 700,000 appeals they get each year. I am thankful to the Social Security Administration for the chart they sent us last night listing receipts of applications, receipts for reconsideration hearings and appeals, as well as Federal court. And what it shows is the tremendous increase that we have seen and the burden placed on those people working at Social Security through the financial consequences of the recession that we have been in and a significant increase in the workload for the employees that work at the Social Security Administration.

The question that I really have which concern me the most is that the initial approval rate is between 33 and 37 percent at the initial determination rate. That percentage on reconsideration, about a 14-percent approval rate, which figures out to be about a 3-percent approval rating based on the total number that were denied. So before you ever get to an administrative law judge, we have essentially approved about 36 to 40 percent of those people who apply for disability. And these are professionals who do this, who work for the Social Security Administration. They understand. This is not a simple system. It is a complex system. In my mind, they do a very good job.

However, each year approximately 600,000 to 700,000 claimants file for a hearing in front of an administrative law judge, and on average, of those that are heard, about 61 percent are approved. So the real question that I have is: Here are the professionals in the Social Security Administration who are taking the record, taking

the facts, and making a determination. And 61 percent of the time, the administrative law judge disagrees with the professionals at the Social Security Administration.

So one of two things is happening: either we are not getting it right at the Social Security Administration by the people who work these records, know these records the most; or we are not getting it right at the administrative law judge level. And the other question that the Committee has not looked at yet is: Who are the number of people who have been denied that should have gotten Social Security disability payments?

So I hope that as we go through our hearing today, we can gain some better understanding for why the professionals at Social Security are so often countered by the administrative law judge. One of the two is not working well to increase that level, and that is a question that has to be determined by this hearing. We need to know the answer to that.

Let me continue on my survey. If an administrative law judge denies a case, a claimant can appeal to the Social Security Appeals Council, and anything unresolved after that, they can go to Federal court.

There is another problem. We have different standards on appeal by each appellate division. So a Federal judge or magistrate in Oklahoma City looks at his district precedents, which are different than maybe the Second Circuit precedents. So we actually at the Federal court level have a different set of standards based on precedents for who becomes qualified and who does not. And I think that—Mr. Chairman, we have not had a chance to discuss that—is something that should be uniform throughout the country. It needs to be the same everywhere, not different in any of the different ten circuits.

The results of our inquiry, to me, were deeply troubling, and I think Social Security is right on top of this. They essentially found the same thing we did. What we found was poor-quality decisions being made about cases at every level of review. Over and over again, this investigation found the Social Security Administration failed to follow its own program rules and procedures. The importance of Social Security getting decisions right cannot be overstated.

Moreover, the agency rarely checks to see if a person's condition improves. While it is supposed to perform continuing disability reviews, what in actuality happens is, what the agency does in terms of continuing disability review, it sends out a card and asks the question: "Are you still disabled?" That is not a review. And I understand the budget constraints and the difficulties with those continuing disability reviews.

Overall, the Subcommittee in its investigation found serious flaws in more than a quarter of the 300 cases that we reviewed. That is not to say that they were in error in terms of their ultimate decision or that they were right in terms of their ultimate decision. What we found is that they were not following the rules, they were not looking at the evidence. And if I may, I would like to put up this one—the top ALJ errors that we discovered: inadequate physical examinations, inadequate mental evaluations, claimant credibility issues, drug and alcohol abuse that was unexplained, and in-

complete and inaccurate records, which I would note for the bottom is probably the most important aspect. It ought to be complete, and it ought to be accurate if it is coming from an administrative law judge. It ought to be complete and it ought to be accurate.

The most concerning findings involved decisions made by a few of the agency's administrative law judges. This was consistent with a review that you all have done. In 2011, the Social Security Administration's Appeals Council found a 22-percent error rate in cases it reviewed that were made by ALJs. In the Dallas Region, which Oklahoma City is part of, the ALJ error rate was over 26 percent.

The kinds of problems we found with ALJ cases were both numerous and troubling. There was conflicting data, missing and insufficient evidence to make a determination according to their own guidelines and their own rules.

Oftentimes, medical evidence was ignored, not looked at at all, not considered at all.

Second, many judges held perfunctory hearings at which claimants did not even say a word. Despite involving some of the most complicated cases, some hearings lasted only 3 minutes—leaving barely enough time to gavel in and gavel out.

A third problem involved judges using late-arriving evidence, which the agency discourages. Some ALJs raised red flags about what they called "dead man's reports" and "store bought opinions."

Fourth, some ALJs would ask vocational experts leading questions that could only give one answer. That is not on the basis of fairness and getting to the truth. That is to try to get a result.

While the Social Security Administration officials that were interviewed by the Subcommittee acknowledged that all of these were significant problems, they said there was little they could do about it because, by law, administrative law judges are given a lot of independence to make their decisions.

The result is a tension between the agency's ability to control the quantity and the quality of a judge's work. Many people we interviewed said this tension was evident in how the Social Security Administration tried to reduce its enormous disability case backlog.

Nearly everyone we talked to said there was enormous pressure on judges to push through as many cases as possible. In May 2007, Commissioner Michael Astrue told Congress that he would end the growing wait time for an administrative law judge hearing. To reduce this wait time, the agency encouraged judges, where appropriate, to consider skipping hearings and write decisions on the record.

One judge we encountered in our investigation played a big role in this effort. Between 2000 and 2009, an administrative law judge from the Oklahoma City office singly handled 5,401 cases—almost all of them on the record and without a hearing. His decision rate was four times faster than the average judge's.

At first I was astounded that somebody could decide 1,800 cases a year—especially since on average they are 500 pages long. I am a speed reader. I am a fast reader. There is no way I could have done that, ingested that information and made a decision on it. I still have questions on how that was possible. On average, he decided five cases a day, 365 days per year, for 3 years.

I soon learned that he could move through them so quickly because the quality of his work left so much to be desired. Unlike the other ALJs, he simply cut-and-pasted electronic images of medical evidence into his decisions. To speed up the process even more, instead of specifically listing and discussing all of a claimant's medical impairments, he would just write "etc, etc, etc."

Worse still, the images that were pasted into the opinions would sometimes have nothing to do with a person's claim for disability. In several cases, the records he pasted said the opposite of his findings. For example, in one case he found somebody could no longer work, but pasted in a medical record that concluded, "Claimant can adapt to a work situation." The basis for his decision was exactly opposite of the decision that he granted.

He was eventually asked by the agency to improve his decision writing. But instead of reducing his caseload to a manageable level, the agency began shipping him cases from around the Nation. He told us that at one point he was asked to do 500 cases just from Little Rock—an average judge's caseload for an entire year. When he finished those, he was sent cases from Atlanta, Houston, Greenville, Des Moines, and Yakima.

Why the Social Security Administration did that is a question I would love to have answered today. I know the pressure was to decrease backlog. The question is, With what quality and with what outcome? Who was denied that should have gotten disability? Who got disability that should not?

The problems we found, however, were not limited to administrative law judges. The Subcommittee also identified a number of issues with the cases the State Disability Determination Services were making at both the initial and reconsideration levels as well.

One of the biggest problems was in how the agency used its Medical-Vocational Rules. This complex set of rules—known as "the grids"—are for people who do not qualify under the more difficult "medical listings," but might still be disabled.

The grids contain a variety of factors—such as a person's age, education, and work experience—laid out in a large set of charts. Depending on whether a claimant can perform sedentary, light, medium, or heavy work, agency decision makers can use the charts to find out whether someone is disabled or not disabled. Finding someone disabled this way is referred to in the agency as "gridding."

While most disability awards were at one time made to people who met the medical listings, today it is the opposite. The ratio is now 4:1 gridding versus a medical determination. A recent analysis by the agency found that ALJs awarded benefits through the vocational grids four times more often than through medical diagnoses.

Another problem is that the grids are easily skirted. Frequently, the Subcommittee found that even if the grid found someone not disabled, ALJs would overrule it and award disability benefits, anyway.

The most frequently seen problems involved the use of a claimant's age. The grids relax the rules for claimants once they turn 50 and then again at 55, appropriately so, making it progressively easier for applicants to be accepted when they hit these ages. And we all understand that. That is understandable and logical.

In a lot of cases, the grids found someone was too young when their ailment started, and so they were not disabled. The ALJs then would just change the disability onset date to the claimant's 50th or 55th birthday. By doing so, the claimant now qualified under the grids. Nothing indicated that the person was more disabled on their 50th birthday than they were the day before.

The conclusion is the purpose of this program is to make sure that all of our citizens who are truly disabled we help and that the safety net be secure. It should be remembered, though, that by the law, by the statute, being disabled means "being unable to work any job in the national economy." This is a high bar to meet. The agency must make sure it is awarding benefits to people who are entitled to them. If something does not change and the programs continue to operate the way they are today, there will not be a safety net left. The trust fund will be out of money. And those that are truly disabled will see a reduction in the payments of their benefits.

So if, in fact, we are accurate to this point, it means Congress has to do something to increase the funding for these programs, either through increasing the tax rates that apply to them or changing the definitions.

We can start by putting—and I know my Chairman disagrees with this, but we can start by putting somebody representing the taxpayer in one of these hearings, and just having them there will change ALJ behavior, somebody else who knows all the record. And my real worry, Mr. Chairman, as we looked at this, is that the record was not thoroughly reviewed oftentimes in many of the 300 cases that we looked at. And having somebody in the room that will force the ALJs to truly look at the whole record will make a big difference in the quality of the decisions and also the rules by which they make those decisions.

I also would note that this is supported by the ALJs themselves and their union. It has been a long-time-standing recommendation of the Social Security Advisory Board, the bipartisan board created to advise both the President and Congress of the changes needed to the agency's programs.

Other simple changes would also go a long way as well:

The evidentiary record should close at least 1 week before the ALJ hearing to give the ALJ the opportunity to judge that information in light of the whole record. Late evidence would simply mean rescheduling. It would not mean the evidence would not be considered.

The vocational grids must be eliminated or reformed so that someone who is 50 years old is no longer "approaching advanced age in the United States."

These and other reforms outlined in today's report I believe are, at a minimum, what should be considered by Congress if we are to, in fact, continue what our ultimate goal is: to truly help those people who have become disabled with their life skills and their income as they mature.

Mr. Chairman, again, I thank you for this hearing, and I look forward to the testimony of our witnesses.

Senator LEVIN. Well, again, thank you, Dr. Coburn, for this thorough report of the report.

We will now call our first panel of witnesses for this morning's hearing: Judge Patricia Jonas, the Appellate Operations Executive Director and Deputy Chair of the Appeals Council at the Office of Disability Adjudication and Review of the Social Security Administration; and Judge Debra Bice, Chief Administrative Law Judge at the Office of Disability Adjudication and Review of the Social Security Administration. We appreciate both of you being with us this morning. We look forward to your testimony.

Pursuant to our rules, all witnesses who testify before the Subcommittee are required to be sworn, and at this time I would ask you both to please stand and raise your right hand.

Do you swear that the testimony that you will give before us today will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge JONAS. I do.

Judge BICE. I do.

Senator LEVIN. We will be using a timing system today. One minute before a red light comes on, you will see the lights change from green to yellow. That will give you an opportunity to conclude your remarks. Your written testimony will be printed in the record in its entirety. Please limit your oral testimony to no more than 7 minutes.

Judge Jonas, we are going to have you go first, followed by Judge Bice, and then after we have heard your testimony, we will turn to questions. So please proceed, Judge Jonas.

TESTIMONY OF JUDGE PATRICIA A. JONAS,[1] EXECUTIVE DIRECTOR, OFFICE OF APPELLATE OPERATIONS, DEPUTY CHAIR, APPEALS COUNCIL, OFFICE OF DISABILITY ADJUDICATION AND REVIEW, SOCIAL SECURITY ADMINISTRATION, FALLS CHURCH, VIRGINIA

Judge JONAS. Chairman Levin, Ranking Member Coburn, and Members of the Subcommittee, thank you for the opportunity to appear before you today. My name is Judge Patricia Jonas. I am the Executive Director of the Office of Appellate Operations and the Deputy Chair of the Appeals Council for the Office of Disability Adjudication and Review (ODAR). Since 1940, the Appeals Council (AC) has helped oversee the hearings process by reviewing hearing procedures and decisions. I oversee approximately 75 administrative appeals judges who review a portion of our administrative law judges' (ADJs) allowances and denials.

Prior to Commissioner Astrue's arrival, we had performed very little quality review at ODAR. This was due to several years of litigation and congressional reaction to the Bellmon Review in the 1980s and budget shortfalls. As a result of that litigation and congressional reaction, our policy guidance and feedback to our ALJs was very limited. In fact, for many years, a remand order was the primary feedback from the Appeals Council to ALJs. While this method of feedback and guidance to ALJs is still an appropriate mechanism to address individual cases, it has limitations. For example, the number of remands to any ALJ is relatively small, and it was generally limited to unfavorable decisions. Today, however,

[1] The prepared statement of Judge Jonas appears in the Appendix on page 55.

we are better leveraging the Appeals Council's unique position, our General Counsel's Office, and the Federal courts to provide better feedback. The key, as Commissioner Astrue advocated, was to institute a more balanced quality review into the hearings process.

First, we developed serious data collection and management information for ODAR, and we also developed an electronic policy compliance system for the Appeals Council. These new tools permitted the Council to capture a significant amount of structured data about the application of agency policy in hearing decisions.

In 2010, our Office of Quality Performance instituted an independent national review of hearings decisions to ensure a consistent and comparative review for all three adjudicative levels of our disability process. In 2009, Commissioner Astrue reestablished the quality review function in the Appeals Council, known as the Division of Quality, that reintroduced a sample review of favorable hearing decisions. It took nearly a year to fully implement this office because we had to hire, train, and obtain office space for about 50 staff to review hearing decisions to identify quality issues.

In September 2010, the Division of Quality began reviewing favorable decisions. These new quality initiatives have improved our feedback and policy guidance. The data we have collected identify the most error-prone provisions of the law and regulations and help us better train our ALJs, which include annual judicial training and mandatory quarterly training for all ALJs. We also recently implemented a new process that expands the opportunity for ALJs to provide feedback to the Appeals Council on its remands. Improved communication increases consistency.

We also provide feedback on decisional quality, giving adjudicators real-time access to their remand data. We provide specific training that focuses on the most error-prone issues. In addition, we provide individualized training as needed. In 2011, the Graduate School USA recognized our government-leading training model with the prestigious W. Edwards Deming Training Award.

These efforts are testing some longstanding traditions within ODAR. We are moving from training based primarily on anecdotal information to using data to identify issues. We develop training to refresh ALJs on policy and offer skill-based training to improve the adjudicators' efficiency and accuracy.

At the same time, we share this information so that the ALJs can more readily use it. Increased feedback and communication is improving our hearings process. Of course, opportunities for continued improvement remain.

I understand the Subcommittee is releasing the report on 300 disability cases. We recognize that the sample of cases selected for the report will limit the ability to generalize conclusions from the study, but that said, we believe that the report highlights the same concerns we have already identified, and we hope to work with you on further improvements to this vitally important program.

While my office has not yet reviewed the 300 disability cases provided the Subcommittee, the agency's Office of Medical and Vocational Expertise did a basic review. I understand that they found a number of policy issues that are consistent with what we saw when the Division of Quality conducted a national random sample review of favorable hearing decisions in FY 2011. Two areas of con-

cern were the evaluation of medical opinions and the assessment of residual functional capacity. Based on data from this review, we provided mandatory training to all ALJs on RFC and evaluation of medical source opinions.

Just as with the cases we see at the Appeals Council, the majority of the ALJs in the cases that the Subcommittee requested appear to have complied with our policies. However, there are examples in which ALJs were not policy compliant in evaluating the appropriate weight given to a medical source's opinion and in assessing the claimant's residual functional capacity. There were also several case examples from one ALJ in which the written decision appeared inaccurate and contained boilerplate information that was not relevant to the individual claimant. The Division of Quality had identified the same issue in the random sample review, and as a result, the Chief ALJ instructed the ALJ to discontinue this practice. This example shows that our improvements are producing positive results, and we are committed to continuing our progress in this area.

Finally, to guide our ongoing quality improvement efforts, we have partnered with the Administrative Conference of the United States (ACUS). Later this year, ACUS will issue recommendations on several areas of our hearings process, including the scope and manner of Appeals Council review, the duty of candor and the submission of all evidence, and the effect of the treating physician rule on the role of the courts in reviewing our disability decisions. We look forward to ACUS' findings to help us further improve the quality of our hearings and appeals process.

Thank you, and I am happy to answer any questions you may have.

Senator LEVIN. Thank you so much, Judge Jonas. Judge Bice.

TESTIMONY OF JUDGE DEBRA BICE,[1] CHIEF ADMINISTRATIVE LAW JUDGE, OFFICE OF DISABILITY ADJUDICATION AND REVIEW, SOCIAL SECURITY ADMINISTRATION, FALLS CHURCH, VIRGINIA

Judge BICE. Chairman Levin, Ranking Member Coburn, and Members of the Subcommittee, thank you for the opportunity to appear before you today. My name is Judge Debra Bice, and I serve as the Chief Administrative Law Judge in the Office of Disability Adjudication and Review. I am responsible for overseeing approximately 1,500 administrative law judges. We strive to make the correct decision as early in the disability process as possible so that a person who is eligible for disability benefits receives them in a timely manner.

Our administrative review process generally consists of four levels: initial determination, reconsideration determination, hearing, and appeal.

The provisions in the Social Security Act and regulations have been incorporated into a standardized five-step process for making disability decisions called the "Sequential Evaluation Process." A disability adjudicator must use this process to arrive at fair, legally sufficient, and legally defensible decisions.

[1] The prepared statement of Judge Bice appears in the Appendix on page 65.

Since the Social Security Board established the hearings and appeals process in 1940, we have sought to balance the need for accuracy and fairness to the claimant with the need to handle a large volume of claims in an expeditious manner.

ALJs decide cases de novo, meaning that they must review cases with fresh eyes and are not bound by the determinations made at the prior levels of the disability process. This is an important principle because a case at the hearings level is often very different from what it was at the initial or reconsideration levels. There may be new evidence for the judge to consider as well as the testimony of the claimant, medical and vocational experts, and other witnesses at the hearing.

In addition, any change in the claimant's vocational profile, such as age, education, or work experience, must be considered. Thus, an ALJ's decision to allow a claim on appeal does not necessarily mean that the earlier determination was incorrect.

At one time there was a common belief within the agency that an ALJ's qualified decisional independence meant that ALJs were independent and not accountable for their conduct and their work. Under Commissioner Astrue's leadership, we have held ALJs accountable where the law permits. Fortunately, most ALJs welcome feedback and want to follow policy. The vast majority of issues are resolved informally by hearing office management. When they are not, management has the authority to order an ALJ to take a certain action or explain his or her actions. ALJs rarely fail to comply with these orders. In those rare cases where the ALJ does not comply, we may order counseling or issue a reprimand. However, the law forbids us from taking stronger measures, such as removal or suspension, unless the Merit Systems Protection Board finds that good cause exists.

In egregious cases, we have been able to remove ALJs, but only after completing the lengthy MSPB disciplinary process, which can take several years and can consume over $1 million of taxpayer resources. Unlike other civil servants, the ALJs we seek to remove receive their full salary and benefits until the full MSPB sustains the removal. ALJs do not repay that money even if the MSPB ultimately sustains the disciplinary action. During this period, we place ALJs on administrative leave to protect the public, and they do not hear or decide cases.

Thank you, and I will do my best to answer any questions you may have.

Senator LEVIN. Thank you very much, Judge Bice.

Let us have a 10-minute first round, and we can go back and forth.

You have exhibits there in front of you, I believe. If you would look at Exhibit 22,[1] this is a 2001 report from the Division of Quality, and last year the Social Security Administration set up a new quality review process to examine actions taken by the ALJs in disability cases. If you look at page 2 of that report, it indicates—I misspoke. Exhibit 22 is a 2011 report from the Division of Quality. Page 2 indicates that the quality review looked at 3,692 cases that

[1] See Exhibit 22, which appears in the Appendix on page 889.

were effectuated, 2,880 remanded, 665—I am sorry. Let me repeat this.

It looked at 3,692 cases; 2,880 were effectuated, 665 remanded, decisions issued on 147. First, Judge Jonas, can you tell us what each of these categories are and what these actions mean?

Judge JONAS. Thank you, Senator, for the question. I am going to begin with own motion review for a moment because I think it can be confusing. It is a technical term from the Social Security regulations, 404.969. And as you mentioned at the beginning, a percentage of own motion is not necessarily an indication of error in the outcome of the decision. I think that it can be misconstrued at times. It is more a measure of whether the ALJ followed the agency policy in arriving at the decision. So perhaps it is simpler to think of it as saying that the decision may be premature, that there was some further policy that the ALJ needed to comply with.

The regulation 404.969 requires a random sample selection of cases. The number of cases, the 3,692, were the number of cases that were selected from that random sample that the Division of Quality considered during the fiscal year. Effectuation means that in the consideration of that case they believed that the ALJ had complied with the policy. They did not take review of the case and let it go forward for payment. So out of that, 78 percent of those were felt that they could go forward with payment.

For the remands, the 665 means the cases in which they took own-motion review and decided that the case needed to be returned for a hearing or for some further action. In some cases, the Division of Quality issued a decision on their own, and that decision category, 147, reflects that. That might be a situation in which the decision itself was correct, but the onset date was in error. And so the Division of Quality has the authority to issue a decision.

For those cases in which an attorney-advisor issued a decision, where the case needed a hearing, it had to be remanded. So 22 percent reflects the combination of those cases that were remanded and those cases in which the Appeals Council Division of Quality issued their own decision.

Senator LEVIN. Could that decision be to affirm, or was that a decision which would reverse?

Judge JONAS. If they had the information in the record where they could have affirmed, they did. Some of the decisions were denial decisions, some were later onsets, some were to correct the decision itself. If a decision had something inaccurate that would have prevented a continuing disability review at a later time, the Division of Quality issued a corrective decision.

Senator LEVIN. So is it fair to say that about 20 to 22 percent of the reviewed files contained errors or an inadequate basis for the decision?

Judge JONAS. That is correct.

Senator LEVIN. Were you surprised by that figure, 22 percent?

Judge JONAS. Senator Levin, this last year we reviewed over 150,000 denial decisions. The main workload of the Appeals Council before this Division of Quality was instituted was the review of denial decisions, and we had seen—I am not going to describe it again as an "error rate"—sort of the equivalent in a denial. It is a decision to grant review of a case when the claimant is denied

and requests review by the Appeals Council, and that runs at about 20 percent this last year. So it is equivalent.

Senator LEVIN. Were you surprised by the large number, or does that not strike you as a large number? A large percent?

Judge JONAS. A large percentage, it is very concerning.

Senator LEVIN. On the gridding matter, you have talked about gridding and Dr. Coburn talked about gridding. These are grids developed by the SSA for different levels of work, with columns for certain characteristics of the person seeking benefits, such as age, education, work experience. Are these grids guidance for the decision makers? Or are they directions? Are they binding?

Judge JONAS. The application of the medical-vocational guidelines depends on what the claimants' impairments are. If they have exertional limitations only, then those medical-vocational guidelines will direct a result. If there is a combination of impairments, both exertional and non-exertional, then those medical-vocational guidelines are, in fact, that. They are a guideline, not a direction.

Senator LEVIN. Do you think the ALJs know that?

Judge JONAS. Yes.

Senator LEVIN. They know which are binding and which are guidelines that are not binding?

Judge JONAS. Yes, sir.

Senator LEVIN. You think that has been clear with the ALJs. OK. I notice that there is a reduction in the allowances in each of the four levels from 2010 and its previous years and 2011. If you look, for instance, at the initial allowance rate, in the 5 years that this chart provides or looks at, it went up from 35-percent allowances at the lowest level to 37 percent in 2009 and then down to 33 percent in 2011, which was the lowest percent allowed of the 5 years. On reconsideration, the allowance rate was 13 percent, then 14 percent, then 13 percent. And then in 2001, it went down to 12 percent, which may not seem like a lot, but 1 percent when you are talking about 12 or 13 percent is a significant change.

On hearings, the hearing allowance rate went from 61 percent, which was steady—this is the ALJ level—for the 4 years before 2011, and then in fiscal year 2011 dropped to 56 percent.

The allowance rate at the Appeals Council was steady at 2 percent, but even at the Federal court level, it went from 5 percent to 4 percent to 3 percent. So it would look as though there are fewer disability findings for the applicant in 2011 as a percentage than it was in the previous 4 years. Is that significant? And if so, why?

Judge JONAS. Senator, I think that there are a variety of factors that go into the outcomes into these percentages. I am certainly not an expert on the case workload at the initial or the reconsideration levels to give you a clearer understanding of why there has been a reduction. I think there are some issues with regard to the demographics, the type of claims coming forward.

In looking at the significant reduction in terms of the ALJ level, I think that, again, we are seeing cases that have different demographics, perhaps younger individuals. Judge Bice, maybe you——

Senator LEVIN. I mean, does it show, for instance, that there is greater care being taken? Is that a reflection, or is it premature to

say that? Judge Bice, just perhaps we would get your comment, and then I will call on Dr. Coburn.

Judge BICE. And, again, I am not an expert on that, but I think what Judge Jonas was mentioning is the change in demographics, and I know when I was hearing cases, I was seeing a lot more younger people applying, or maybe people who had been working and had lost jobs and were also applying. But I also think and I am very hopeful that it is a result of some of the increased efforts we have made on training our judges on our correct policy. As Judge Jonas mentioned, we have started a quarterly training for all of our adjudicators, and we have been hitting some of these most error-prone areas that were identified in her reviews.

Senator LEVIN. Thank you.

Judge JONAS. Senator Levin, I might supplement this as well. We have had a significant turnover in staff that support the administrative law judges over the last 5 years, and we have had the opportunity to have significant amounts of training for support staff as well as for the administrative law judges. I am cautious about saying that the reduction is the result just of increased quality. But I agree with Judge Bice; I think it is a significant part of this decision.

Senator LEVIN. Thank you. Dr. Coburn.

Senator COBURN. Thank you. Judge Bice, I just want your opinion on this. Are the rules for determining disability clear enough so that two trained, knowledgeable professionals could look at the same case and come up with the same decision? In other words, how subjective is this? If I went before and had a disability that was borderline and you had two ALJs looking at it, they all looked at exactly the same information, are they going to come to the same result?

Judge BICE. No, and one of the factors is the qualified decisional independence of the judges. We do not tell the judge how to decide a specific case or put agency pressure on that. But we all follow the same law, regs, and agency policy. And we have invested a lot of time and effort into training our judges so that they all have that same understanding of the law. And I believe in most cases the vast majority of our judges do reach the right conclusion. They are very dedicated public servants. They want to apply the law correctly. They follow agency policy. At the hearing level, you can have a lot of conflicting medical evidence, and there really is substantial evidence to support different conflicting results.

And so that is the job of the judge. I always tell our judges, "Do not abdicate your role as a judge. Really develop it. Ask those difficult questions, make those difficult decisions." But they need to assess the credibility of the claimant. This is the first time that anyone is seeing the claimant and talking to the claimant about the claimant's testimony about their subjective symptoms, about their activities of daily living. Sometimes we get new information. So that can make a difference.

Senator COBURN. So tell me why—what was the reasoning that the Social Security Administration has discontinued the Minnesota Multiphasic Personality Test for use by the ALJs since it is—as a trained medical professional, I know how to use that test, and so do ALJs. Why have they been excluded from using that test?

Judge BICE. Senator Coburn, I would like to get back to you on the record for that. That is really an area for disability policy people. As judges, we administer the policy that is created, and, while you are a doctor, I am not.

Senator COBURN. Well, does it make sense to limit the ability of ALJs? Given that part of their problem is independence or part of their advantage is truly independence, why would we limit their ability to use a very well proven, half-century-old psychological technique to look at—why would we take that tool away from ALJs? Can you give me any explanation of why you would think that should not be in the armamentarium of an ALJ in assessing a case?

Judge BICE. I am going to defer to our disability policy people and ask to get back to you on the record for that.[1]

Senator COBURN. All right. Would you make sure that comes to me?

Judge BICE. I will make sure it does.

Senator COBURN. Thank you.

Judge BICE. Thank you.

Senator COBURN. We have concluded pretty much what the Social Security Administration has in terms of cases that do not meet the requirements for quality. What are the three biggest problems, Judge Bice, that you see that account for that lack of almost a quarter of the cases do not fit to the parameters of quality in the decisions?

Judge BICE. Thank you for the question. I think it is important to recognize your cases came from 2006 to 2009. We have really invested a lot in training since then. I think the first one is the quality review that Judge Jonas spoke about.

Senator COBURN. We did have cases in 2010.

Judge BICE. Oh, OK. I am sorry, so 2010. But as Judge Jonas said, it was in 2010 that we were really starting that quality review. I know as a judge I received very little feedback initially. I could get remands that would tell me if I did something wrong, but that was usually on a denial. I was not receiving ongoing feedback on the favorables. Now, with the Division of Quality, we are providing that information to our judges, and we are actually providing it to them now in real time. We created an electronic tool where they can go in daily and see what the Appeals Council has seen on their cases. And we are also providing information. We are working on developing a training tool for them so that when they see that they have made an error, according to the Appeals Council—either a remand or a decision by the Appeals Council—they can click on a link and get a summary of what the policy is and examples of how they should apply that policy in real life.

So these are the things we are trying to give back to the judges—that feedback on an ongoing basis. And we really believe most of our judges will self-correct if they get that information.

Senator COBURN. Do you all know by judge error rate in terms of compliance with the rules?

Judge BICE. I am going to defer to Judge Jonas.

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[1] See Exhibit No. 23 which appears in the Appendix on page 900.

Judge JONAS. Senator, as I mentioned earlier, in our denial reviews—over 100,000 each year—we have information about the mistakes or the errors or the concerns—the policy issues—and certainly we make that available. And the point I think Judge Bice was making about individual accountability is sort of a national approach that we have been using for training that I summarized in my testimony about using data that it is not anecdotal anymore. So an ALJ knows that these are the issues that they are having.

So we have a national approach to provide the information so that it is consistent to the ALJs and to the senior attorneys so that they are informed. And at the local level, they have got the tool that Judge Bice was discussing.

But these are complicated—I think you addressed this during your opening, that these are complicated rules. People work very hard. We think that most people who come to work want to do a good job, whether you are at the DDS or at the ALJ level. So we have a lot of information. They have a record to review. We want to give them tools that they can use to assist them and do this, not just to make them more effective but also efficient in doing what they are doing.

So one of the tools that we have been developing—I discussed it in my testimony—at the Appeals Council level, developing a policy-compliant tool for analyzing cases. We are developing a policy-compliant tool for the judges to use at the hearings level.

Judge BICE. In fact, it is an electronic bench book, and actually we have been training on it in this last month, and this is going to be a policy-compliant electronic tool to help the judge in the adjudication of their claim. For instance, one example would be when the judge gets to the step on the listing. In this electronic tool, it will actually bring up the most current section of that listing and the specific areas that must be met in the record, and then we go through that, and it helps the judge make sure that they are making a correct decision at that level.

Senator COBURN. You discussed the difficulty and the time constraints and the Merit Review Board of taking and terminating a judge who is noncompliant. I think your figure was $1 million, was what the cost was. Three cases wrongly decided is $1 million, on average. And when you have an ALJ that is an outlier—and let me State, the vast majority are wonderful public servants. There is no complaint there. But the fact is what we have discovered, like in Oklahoma City, one judge had a significant problem with quality. And no wonder. He was doing 1,500 cases a year.

So I go back to this. Is somebody in the Social Security Administration tracking judge by judge based on quality so you know who is the problem and who is not? Where is the management to say here is a judge that has a 40-percent error rate in terms of the quality, not whether they decided the case right or wrong, but in terms of meeting the standards that you expect an ALJ to do, where is the management system to hold them accountable? That is what I am asking.

Judge BICE. In a broad area, we take the results of the reviews done at the Division of Quality. And I believe they are valid at the regional level, correct? They do not go down to the judge level. So we do not have any valid data at that judge level, but just like in

your report, we found what those common errors are, and we are addressing those with all of our judges, because if those are common errors, we are going to hit all of our judges and make sure that they are trained on that and that they are given the tools. This quarterly training we do is a cooperative effort. It is from the Appeals Council.

Senator COBURN. I understand that, and I am not trying to be confrontive. But my point is, let us say you do all that, and in our region out of Dallas, we still have five judges that do not comply with your quality standards, do not follow the training. Who is watching that? And where is the control for that on a per judge basis?

Judge BICE. Let me give you the example of what we do when we find judges that are not compliant with policy, and it might come various ways.

Senator COBURN. And this is a rarity.

Judge BICE. I know.

Senator COBURN. I am not trying to generalize that this is across the board.

Judge BICE. But we share your concern, and so we start with training. That is our building block. We go to the judge. We make sure that that judge has been trained on the policy. If they need remedial training, we will give them that. And this, again, is the broad approach that we take to this. And then we will monitor to make sure that that judge is now complying with the policy that we have trained them on.

If we find that that judge continues to be noncompliant, we can issue a directive to the judge saying, "You have been trained on the policy. The expectation is that you will follow that, and if you do not, we can take disciplinary action." Most of the judges going down this path, correct. But if they would not, after we had issued a directive to follow the policy, then we could start down a disciplinary track.

Senator COBURN. So you are keeping track.

Judge BICE. As we become aware of it. I am not keeping track individually because I do not have valid data. But if I from other sources become aware of problems——

Senator COBURN. I guess then that is my question. Why would that not be part of the management system of the ALJs and the Social Security Administration to not track the four or five or ten outliers out of 1,500 to know when you have a problem and correct it rather than to anecdotally discover it.

Judge BICE. And, again, I think because we do not have valid data at the judge level, so——

Senator COBURN. OK, but what I am asking is why haven't you developed valid data at the judge level?

Judge JONAS. Senator, certainly you have talked about that phrase "outliers." So an outlier could be in terms of the outcome of the decision is one issue.

Senator COBURN. Well, I was very specific. I am saying they do not meet the quality parameters under which you all say are the guidelines for which they should make a decision. I am not talking about the results of the decisions. I am talking about the quality of the work product as inside your guidelines.

Judge JONAS. I am going to refer back to the testimony that I gave at the beginning just as a predicate for my answer, and it is the notion about litigation and concerns about the Bellmon Review. I mentioned that our review at the Division of Quality is a random sample. That regulation and the comments that came to it from 1998 reflect part of that history of litigation with regard to what was then described as targeting ALJs about outcomes.

The random sample does give us some indications where there is an issue. As an example, in our Division of Quality, if we are seeing cases even just coming in on the random sample repeated from a judge who is not following that policy—say four out of the four cases they reviewed they took own motion—then it allows us to go back and do a focused review as to what might be happening. We do not want to draw assumptions just on the basis of a handful of cases. We want to know a little bit more. What Judge Bice was alluding to earlier is we want to make sure that there is not something about the circumstance that the judge is working in that might be directing something, and it might be the type of cases he received or something in the hearing office that might be impacting that. So it requires us to look a little bit more deeply.

Senator COBURN. So I understand this, because I am going to be on this for the next 4 years, you are saying, given previous case law and the Bellmon Review, that you are prohibited from actively managing quality parameters of ALJs. Is that what your testimony is?

Judge JONAS. My testimony is that in our understanding of and your concern about respecting the administrative law judge qualified decisional independence, we are cautious about how we use information and how we follow those regulations. I do not think it precludes us from looking at individual ALJs. The Commissioner has a responsibility for oversight of the program and can look at any decision at any time. But we want to be cautious about that and careful. We want to be sure that we are doing this in a way that will facilitate improvement of the program. So when we look at an individual, if there is something about that case or something about the way a case has been adjudicated, we will look more carefully before we draw a conclusion. I think that requires us to manage very carefully at the administrative law judge level.

Senator COBURN. But your testimony still is you do not have the capability to find the outliers through your management system. For example, in Oklahoma City, one of the administrative law judges that we interviewed and that we looked at their cases, the one that did over 5,100 cases in 3 years, you do not have a management system to say that is going on, nor a flag that says somebody is handling four times as many cases as everybody else is handling, and we have no management system with which to deal with that.

Judge BICE. I think we have a system. We get information from the reviews that are done, because if the Appeals Council does see something in the review, they are letting me know, and then we are taking further looks at that. We also get it from maybe bias complaints and all that. But it would take a lot more resources than we have right now to review. We have several hundred cases for every ALJ to get a valid sample. So I do not have the resources, and I do not think Judge Jonas has the resources, but we are look-

ing—we are very concerned. I am very concerned about judges that pay a high number of cases, judges that pay a low number of cases, judges that produce a whole lot of decisions, judges that produce very little decisions. And we are looking at a number of factors, other factors in addition to just those, to try and identify judges or offices where we need to take a closer look. And when we have that data that says we should take a closer look, then we can perhaps do a focused review.

Senator COBURN. Well, I am way over my time, and I want to defer to my Ranking Member. I would just ask that you all submit to this Committee what your management system is to capture, not after the fact but to anticipate outliers in the future, because the importance of that is creating the expectation on the ALJs that they will operate within the bounds that they are asked to operate within. And if there is no expectation, then there will not be any change in performance. And so all I am asking is what is the system and send it to me so we can look at it and analyze the management system for that.

I understand the independence issue, but it does not change the fact that if the expectation is I am free to do whatever I want in the poorest quality that I want, like we saw on these 5,100 cases, I would love to see somebody review those 5,100 cases just to see what was the quality, because the samples that we got show a tremendous high number of problems—not in terms of outcomes necessarily but in terms of following your own guidelines on how those cases are to be decided.

Thank you.

Senator LEVIN. Thank you, Senator Coburn.

Our Ranking Member, Senator Collins.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman.

First, let me commend you and Senator Coburn for undertaking this investigation. I believe that there are very serious fairness and fiscal issues that are at stake. The fairness issues are obviously that we want to make sure that individuals who are unable to work and meet the high standard of being unable to perform any substantial gainful activity in the economy receive their benefits and do so promptly. At the same time, we want to make sure that those who do not qualify are not receiving benefits, and this is particularly important because of the fiscal issue.

As Dr. Coburn has reminded us, the trustees of the Social Security system project that the disability insurance component of the trust fund will be exhausted in the year 2016. That is truly alarming and calls upon us to make sure that those who do not meet the standards are not receiving benefits as well as making sure that those who do meet the standards receive their benefits.

Mr. Chairman, I suspect that you remember back in 1983 and 1984 that Senator Cohen and you did an in-depth investigation on the Social Security Disability Program. I was a staffer on that investigation, and ironically, what we were looking at back then was the fact that people who clearly lacked the ability to work were being denied benefits unfairly. So it happens on both sides, and that is why we have to be careful as we proceed here not only to

preserve the independence of ALJs but to recognize that they are an important check on a system that back in 1983 and 1984 produced outcomes that were just inexplicable. I remember one infamous case was an individual who literally was in an iron lung and was found to have work capacity. And so it does go both ways.

But that brings me to follow up on Dr. Coburn's question on outliers. Now, if the Wall Street Journal in its article last year was able to identify this ALJ in West Virginia who approved 100 percent of some 729 cases and then also indicated that there were 27 judges that awarded benefits 95 percent of the time, it seems to me that, if the paper can come up with a system, Social Security ought to be able to come up with a system that identifies outliers. And, again, I want to emphasize there can be outliers on both sides. There can be an ALJ who, for reasons that do not follow the standards, is turning down everybody as well as someone who is approving everyone.

But my question is very similar to Dr. Coburn's. Doesn't Social Security have a system to identify outliers and then take a look at their cases and see if more training is needed, if there is a disregard for standards, if there perhaps is an alcohol or drug abuse problem? There could be numerous reasons for it. Is there no system now in place that automatically flags the true outliers? Judge Jonas or Judge Bice, I am not sure which of you I should be directing this to.

Judge BICE. I will start, and then I will defer to Judge Jonas. We do have a system where we can track the judges that are paying a lot of cases or denying a lot of cases, producing a lot or producing very little. We have good statistical data on that.

Senator COLLINS. But that is the number of cases.

Judge BICE. Right.

Senator COLLINS. That is a different issue.

Judge BICE. The quality is much more difficult to track, and I will defer to Judge Jonas on that. But I want to mention one thing in terms of expectations for our judges. This year I issued a memo to our judges. We are not silent on what we expect our judges to be doing in terms of quality. I issued a memo to all of our adjudicators, administrative law judges and senior attorneys, as to what they need to be doing, and it is many of the things that you found in your report. We talked about that their decisions have to have a very specific residual functional capacity, that they have to evaluate all medical source statements, that they have to apply the law and policy correctly. So we have gone through that, and we are very, very clear in our message to our judges that we do expect them to follow the policy, and we are giving them that information when they are not.

But I will defer to Judge Jonas on the difficulties of tracking quality.

Judge JONAS. I will comment briefly before we go to the quality. You noted that newspapers and others are able to look at data. So the agency has been very transparent with the administrative law judge data for a number of years, both in terms of the number of cases issued and the outcomes. And I think that is an important factor about making sure that the agency is transparent in what it does.

It is harder to evaluate whether the outcome was correct or not, and that is where we do not have statistically valid data at the local office level. In FY 2011, we did about 3,600 reviews under the random sample selection criteria that is described in the regulation. This year, we are doing close to 7,000 of those. But it still gives us data that is only statistically valid at the regional level and at the national level. But when we do those reviews, it raises issues about individuals, so that does give us a chance to look more deeply and, again, probe more deeply as to what might be happening. In fact——

Senator COLLINS. But then what happens? Say that an individual ALJ as a result of that review appears not to be following the law and regulations.

Judge JONAS. This gives us an opportunity to do a focused quality review, but it is a post-effectuation review. It is not in line. I did not make clear earlier the difference between the types of reviews. Our Division of Quality is doing this random sample review in a pre-effectuation level. So the own-motion review means that if we take review, it is precluding effectuation of the benefits until we decide whether that case either has to go back or can be effectuated.

But in a post-effectuation review, our of Office of Quality Performance as well as the Division of Quality can do a post-effectuation focused review, a probe to see what might be happening.

Senator COLLINS. But do they?

Judge JONAS. And we do that. And when we get the results of one of those reviews, the Division of Quality reports that to Judge Bice, to me, and to the executives in ODAR for whatever educational or other sort of executive decisions we need to make about that data.

Senator COLLINS. Well, let me give you an example of a system that I think offers a model for you. In Maine, several years ago there was a program that identified outliers among physicians who were performing too many caesarean sections, and what happened——

Senator COBURN. You are getting real personal here.

Senator COLLINS. Sorry about that. [Laughter.]

And it was an extremely effective program because statistical analysis was used to identify the outliers, and then that physician was counseled by other physicians who did ob/gyn work. And it was astonishing to see within the next 2 years the physician who was the outlier's numbers dropped dramatically.

Similarly, I am told that Medicare has an extensive integrity program to review the decisions of providers. It just seems to me you could do more without compromising the professionalism, the independence, the integrity of your program if you looked at models that Medicare is using and that the medical profession is using. And, again, I want to emphasize I think this goes both ways. We do not want people who are just automatically turning down everyone or doing only cursory reviews, as well as those who are automatically approving everyone.

But what troubles me is your system, as you have described it, does not seem rigorous enough to me to identify outliers, which I think you could do easily statistically, and then have some sort of

panel of ALJs review the cases. Because who knows? Maybe there were a batch of cases where every single one of them did deserve to be approved or every single one did deserve—so, but have someone take a look at the quality of the cases and whether the law, the regulations, the best practices are being implemented. That is what I think you need.

Judge JONAS. Senator, let me add something to what I said before as well. In my testimony, I talked about a vigorous data collection tool at the Appeals Council when we review cases, and it does collect about 170 different types of errors. So we do have quite a bit of data about this.

In my testimony I also discussed that we have been working with the Administrative Conference of the United States, asking them for recommendations in some areas, and this is actually one of those areas in which we have asked them for some recommendations in terms of how we might better use the focused reviews for identifying outliers and how that information would be appropriately used. We expect those recommendations by the end of the year.

Senator COLLINS. Well, I am now over my time, but I just hope you will make this a priority. There just seems to be a vagueness in the system right now, and I think it could be tightened up using the medical model I have described without in any way undermining the decisional independence of the ALJs.

Thank you, Mr. Chairman.

Senator LEVIN. I have a few more questions, and then we will call on other Senators to see if they have additional questions.

My understanding of the Bellmon Review was that the court said you could not look at outcomes and act against judges based on an outcome survey. What you are telling us today is that you do a random survey not of outcomes but of errors, in effect, error rates, and where that random survey shows that there is a particular judge that has a significant—or judges that have significant numbers of errors, that then you do a focused review of those judges. Do I have that right?

Judge JONAS. Senator, the random selection is selecting cases as they come in. It is not identifying a particular ALJ.

Senator LEVIN. OK. But, however it selects them, if that turns out that there is an indication that particular ALJs have a large number of errors that you then can do a focused review of that ALJ. Is that true?

Judge JONAS. The regulation that I was referring to is the pre-effectuation random selection review. Post-effectuation, our focused reviews are not just about ALJs. They can be about other participants in the hearing process. It might be about something we see either through the random sampling reviews or through our denial reviews, or it might be about a particular type of medical report we see that is coming in. We have done focused reviews on those issues.

Senator LEVIN. I think what Dr. Coburn was getting at—and I am not sure I understand your answers—is that we see error rates, that is what we are focused on, not outcomes but error rates, since you have a way of determining errors, you have standards, and if they are not met, there are errors. How do you get to judges that

have large error rates? Put aside outcomes. It does not mean they are wrong. Just error rates. How do you get to those judges that have large numbers of errors?

Judge BICE. Do you mean how do we find them?

Senator LEVIN. Yes. He used the word "anecdotal." So far that is about what I see as anecdotal. I do not see that there is any kind of a management process, which is what I think he was getting at, to try to find those ALJs to take initiative or to affirmatively look for ALJs that have large numbers of error rates.

Judge JONAS. So, Senator, let me address it this way. Until we reinstituted the quality review of favorable decisions in 2011, our focus would have been principally on reviewing those denial decisions. That is when we would have seen a decision for review as to whether or not there was a mistake or an error in terms of whether they were following the policy. So in my testimony, I mentioned the feedback from that. So if we identified in those reviews that there was some sort of policy problem with them, the feedback to the ALJ was typically a remand to that individual.

When the Commissioner authorized us to reinstitute the Division of Quality to look at favorables, that is what gave us the opportunity to start looking at the favorables in a systematic way into this random sample that you then identify where are those significant problems. And that is at a national level that we are having that conversation.

I think Judge Bice could certainly comment at a local level. There has always been a discussion about the quality of decisions.

Judge BICE. Right, and I think what——

Senator LEVIN. It is only one at a time. I may be wrong.

Judge BICE. OK. Yes, and I think it is important that through the requests for review, the reviews of denials and remands, we are able to identify some ALJs or other adjudicators with issues and that we might then look at that in more depth.

Senator LEVIN. Let me interrupt because I think maybe I am not really understanding what you are saying. I think the question is—to me it sounds anecdotal. Is there a way—and I do not want to misstate Dr. Coburn's question because he states them better than I can. But the way I understand it, there is no management tool that is in place to affirmatively take the initiative to identify ALJs with large error rates. Is that accurate? And if so, can that be put in place? You cannot, obviously, go through millions of cases or hundreds of thousands of cases and look at every single case to determine whether or not there is an error rate, whatever your hundreds of thousands number, you cannot do that. I do not think. But is there not some way that you can identify ALJs, taking an affirmative action, taking the initiative to identify the ALJs that have a large number of error rates? He asked you, I think, to do that for the record. I will put that question that way. It does not exist now, obviously, or else you would have said it exists.

Judge JONAS. Let me summarize this, and perhaps it links back to my testimony. The fundamental way in which we improve quality and address these issues is to capture data, and so we capture structured data with these tools that we developed that were available to the Appeals Council beginning in 2008 and 2009. That is our foundation for quality, for identifying quality problems. So we

build on that structured data. We capture that, analyze that data to decide and to look at the various offices, various ALJs.

We then can do the focused review to probe more deeply on a particular issue, particular area, particular type of disability, and that is what allows us then to go back and address that by building these policy-compliant tools like the electronic bench book that would then facilitate the appropriate action by the ALJ.

Senator LEVIN. I understand. That does not get to what I am asking about, and if there is a way of doing that, I think we would like to know, and if not, tell us why not.

Two other quick questions. One, there seemed to be very significant differences in the regions. Region VIII has a 15-percent error rate, according to this chart. Region VI has a 26-percent error rate. One in four cases were problematic—in other words, not wrong or right but problematic. Can you tell us why there is such a big difference between Region VIII and Region VI?

Judge BICE. I noticed the same thing. We have gotten this data. It is something I would like to explore, but I have not gone there yet, and I do not know if Judge Jonas has done anything at the Appeals Council.

Senator LEVIN. Would you let us know the answer after you look that up.

Judge JONAS. We will provide that.[1]

Senator LEVIN. Let us know what you find.

Finally, on the government representative issue, I believe that, Judge Bice, you were a government representative, if I understand what I heard.

Judge BICE. Yes.

Senator LEVIN. And this was some years ago. Can you give us your experience. There was some kind of a pilot project, was there, back in—was it as early as the 1980s?

Judge BICE. Yes, it was. We briefed the Senate Finance Committee on much of this information. But during the 1980s—I believe it began in 1982—the agency tried a pilot where there was a government representative at the hearing at selected hearing offices. I participated in the pilot from 1984 to 1987.

During the course of the pilot, there was a U.S. district court case, Sallings, that enjoined the project, and subsequently the agency discontinued the project because of the interruption caused by the court case and because of fiscal constraints.

Congress originally supported the project, but as it was developing and proceeding, there was a lot of congressional opposition to that, and, in fact——

Senator LEVIN. What is your personal experience?

Judge BICE. My personal experience? I can tell you a little bit about what I did.

Senator LEVIN. No. Just what did you find? Did you find it useful? Not useful?

Judge BICE. We were present in the hearing, questioned the witnesses. We reviewed the cases ahead of time. We could request evidence. Overall, I did not see a significant difference in the case outcomes or in the timeliness of the decisions. Again, these are com-

[1] See Exhibit No. 23 which appears in the Appendix on page 900.

plicated cases with substantial evidence on either side. There were a handful of cases where I know I made a difference, but by and large, I did not see a significant change in the outcome of the hearings.

Senator LEVIN. OK. Dr. Coburn.

Senator COBURN. I just want to go back to one of the things that—we are concerned about high denials as well as high approvals. But the one thing this study found is the judge that did the most cases had the highest approval rate. The one doing 5,100 cases over 3 years approved almost all of them. And what we are hearing today is you have no system to capture that or to manage that. And so I look forward to your commitment to return to us what your management system is for that.

One of the things in discussing with the ALJs was the pressure to decide cases. One of the factors we heard in talking with them is there is pressure to get it decided and to get it decided quickly. Do you think ALJs can sometimes feel pressured to move faster than they would like? In other words, the pressure is so great that the attention to the case becomes sacrificed because of the pressure to move the case? One, where is the pressure coming from? From the agency or somewhere else? Each judge is expected, I think, to decide somewhere between 500 and 700 cases a year. That would imply to me, given the depth of the complexity as well as the mass of the paper, that they are going to have to move quickly to be able to do that. Is 500 to 700 cases a reasonable demand? And are there not pressures—are there not results from the pressure to move cases quickly, just taking in human nature, that might increase the error rate?

Judge BICE. Thank you. In 2007, Judge Cristaudo, who was the Chief Administrative Law Judge at the time, asked judges to do 500 to 700 decisions a year, but it was very important that he asked 500 to 700 legally sufficient decisions a year. That has not increased. We have not increased that expectation. It still to this day is 500 to 700 cases.

We have invested a lot in the training of our judges. We provide them with lots of tools. They are not working in isolation. The case is developed before it comes to them. It might have been reviewed by a senior attorney. They have senior attorneys available to them to assist with that.

My personal experience is I have been able to do over 500 cases in a year in a legally sufficient manner. And I can say that in 2007 there were 46 percent of our judges that were within that range. There are now 77 percent as of the end of FY 2011. And that was without an uptick in the allowance rate. So I do think it is fair and reasonable. I think the judges have to work hard at it, but I am giving them those tools. And I am very, very careful in my messaging that I always want judges to do legally sufficient decisions. When I talk to judges about moving a case, I always tell them, "If it is ready to be decided, you need to decide it." And I want them to decide it and move it along quickly at that point. But if judges need the case developed, they should develop the case, again, in an efficient manner. They should get the evidence that they need. If they need additional medical evidence or a consultative examina-

tion, they should do that. They should do a really good hearing and——

Senator COBURN. But you all have limited judges on getting the evidence they need because you have told them they cannot use the Minnesota Multiphasic Personal Test.

Judge BICE. That is one exam, but they do have the right to request the medical evidence if the claimant does not submit it or a consultative exam.

Senator COBURN. I know you are not a doctor.

Judge BICE. Right.

Senator COBURN. But you are much better. You are a judge—the point being that is key medical evidence that is recognized worldwide as a standard with which physicians make judgments all the time. And when we limit—you say you take the time to develop the case, to mature the case, and then you limit what—the other thing is you have limited—they cannot use any social media. So if somebody is out riding a horse, roping a calf, but they are making a claim for totally disabled and they have got Facebook showing them do that, you are telling the judge, "You cannot look at that." I mean, that is part of the rules of Social Security today.

Is there a limitation on the number of cases that the judge can see a year?

Judge BICE. Yes. Twelve hundred.

Senator COBURN. So how did our judge in Oklahoma City do 1,500 and 1,600 a year?

Judge BICE. Because Commissioner Astrue for the first time limited the number of cases that a judge can be assigned last summer, and he limited it to 1,200 because of the concern of judges doing a high number of cases. And so we have implemented that. We will not assign more than 100 cases to a judge in any 1 month so that they can work on an even basis. And we do look at the judges that have high numbers. We have looked at their allowance rates. Not everyone that produced high numbers had a high allowance rate, and some had, in fact, a very low allowance rate.

So we are looking at those dynamics, but we capped them at 1,200, and we continue to monitor that monthly.

Senator COBURN. OK. My other in regards to that is if a judge is doing 1,200 cases a year, that is three cases a day—actually, that is more than three cases a day. That is three cases a day, 365 days a year, three-plus cases. Average background is 500 pages. How in the world can they possibly do that?

Judge BICE. I am not going to speak for those individual judges. Again, this was a cap. My expectation is 500 to 700 cases, and I have always told the judges, "I do not want you doing more if you cannot do them in a legally sufficient manner." But I know many of our judges have developed very efficient means of reviewing the record. We have a lot of electronic tools. The case comes to them exhibited. The medical records are marked with whom they came from, the dates they came from. There is case data that is available electronically, a cover sheet that the legal assistants prepare for them outlining a lot of the information. They have senior attorneys available to help them.

Senator COBURN. Yet our study shows 25 percent of those cases did not look at the complete record.

Judge BICE. And we are encouraging our judges to do that. That is our expectation. We are training them on how to do that.

Senator COBURN. All right. I want to cover one more topic, and you may have to defer on that, and that is fine. The outdated job list, cases filed show that the DDS examiners and the ALJs relied on the Dictionary of Occupational Titles. When was that last revised? It occurred in 1977? That was before Facebook, iPads, computers generally throughout every bit of our commerce. And so Social Security has a plan that is going to cost $108 million to create a new OIS system that will not be ready until 2016.

Are you familiar with the Department of Labor's O'NET system?

Judge BICE. Yes, I have been on it.

Senator COBURN. And so why is that, first of all, not sufficient, one? And in what way specifically is it not sufficient? And, number two, why should we take $108 million to create a new system out here for Social Security when we could use O'NET and put that $108 million into speeding up the processing and the availability for people's adjudication of claims?

Judge BICE. And you are correct, that is outside my area of expertise, so I would like to defer and get back to you on the record with that answer.

Senator COBURN. Judge Jonas, do you have any comments on that?

Judge JONAS. Senator Coburn, I think we all agree it is an outdated resource. I am aware that we have recently signed an agreement with the Department of Labor to build on something they already have. I am not aware of the details about this, but we will provide that for the record.[1]

Senator COBURN. OK. I just want everybody in the hearing room to understand. We have a system. It is outdated. The Department of Labor has a system. Maybe it is going to be modified. In the era of trillion-dollar deficits that both Republicans and Democrats can claim responsibility for, $108 million to create a list of jobs in our economy, does anybody think that might be a little high besides me, $108 million for a list of jobs when we have got a database at the Department of Labor that lists all the jobs? Does anybody have any comment on that?

Judge JONAS. I think we would prefer to get back to you on the record.

Senator COBURN. OK. Do you think it is quite remarkable that our list of jobs that we are using now at the Social Security system has no computer-related jobs in it for comparison, since the definition of "disability" is there is no job in the economy that you can perform?

Judge BICE. One of the things that we do at the hearing level is we do have a vocational expert there, and we can rely on their testimony and their expertise.

Senator COBURN. So the assumption is they would be additive to the old system that we have today.

Judge BICE. Right, and they might explain why it is in conflict with——

[1] See Exhibit No. 23 which appears in the Appendix on page 900.

Senator COBURN. And do you see that—I would ask Judge Jonas this. In your review of both approved and denied claims, do you see the utilization of that effectively representing the jobs in the economy today?

Judge BICE. I do not think I have that detailed information of what we have seen.

Senator COBURN. OK. All right. Well, that is fair. That is fair.

One last question. Since 1980, the number of claimants that are represented by attorneys has doubled in terms of the actual number of cases. Why is that?

Judge BICE. I do not have an explanation for that.

Senator COBURN. You do not dispute the number, though?

Judge BICE. I do not have that data, so I cannot agree or disagree with it. We could get that for you or look at that. I can tell you as a judge, we do advise unrepresented claimants of their right to representation, but we are neutral. We neither recommend nor discourage. We just tell them of the right.

Senator COBURN. All right. Thank you, Mr. Chairman.

Senator LEVIN. Thank you very much, Dr. Coburn. Our two witnesses, thank you both for—oh, I am sorry. I did not see you come back.

Senator COLLINS. That is OK.

Senator LEVIN. I saw you leave, but I did not see you come back. I apologize. Senator Collins.

Senator COLLINS. I am stealth-like. [Laughter.]

I will just ask one question, and it is a philosophical question. The Supreme Court has described the Social Security Administration's administrative process as "unusually protective of the claimant."

First of all, do you agree that the disability determination and appeals process as it currently stands is structured in a way that tends to favor the claimant? And a related question: If you do agree, is that the way that it should be? Judge Jonas, we will start with you.

Judge JONAS. Thank you, Senator. I agree that our policies are structured in a way—and I think Judge Bice just mentioned the notion about making sure that the claimant is aware of their rights so that they are protected. We look at that in terms of reviewing cases at the appellate level to ensure that the claimant's due process rights are protected.

It is certainly a culture in which we recognize that individuals can come without needing someone else with them and that we will look at them. It is protective, I would agree.

Senator COLLINS. And my second question is: Should it be? The reason I ask that is I believe one of the recommendations that has been made in this report is to have a government representative at the ALJ hearing. And I am trying to decide whether that is a good idea or not, whether that would change it into more of an adversarial proceeding, which I do not think really is the goal of the process, or whether that government representative is needed to bring more balance into the process and to ensure that the taxpayers' interest is represented. So, again, I have not reached a conclusion on that, but when I look at what the Supreme Court said

and your response, Judge Jonas, I am trying to evaluate that recommendation in the report.

Judge BICE. I will just give you a little background. I do not know if you heard it before, but during the 1980s there was a pilot of the government representative project. So we have had some experience with that. There was a district court case that enjoined the process, and we discontinued it. We have not pursued it. Congress was in support of it originally. During the pilot, there was congressional opposition.

We are always looking to improve our processes and our hearings, but we want them to be fair, accurate, and efficient. We are not sure whether a government representative approach can be crafted that would meet those principles.

Senator COLLINS. So what would your concerns be? How would it undermine fairness, for example?

Judge BICE. I do not have any official position on that. I am just saying that is kind of what our broad views are given the experience in the 1980s.

Senator COLLINS. Well, let me just end my questions by saying that it would be helpful to me if you take a close look at the recommendations that were included in this report and provide us with your official reaction to the recommendations as we all seek to achieve the goal of a system that is financially responsible, fair and equitable, and that provides benefits to those who meet the requirements in the law, but does not provide benefits to those who do not. We need to make sure we are fulfilling both goals.

Thank you, Mr. Chairman.

Senator LEVIN. I wonder if it would be agreeable to you, Senator, and also to Dr. Coburn, if we ask actually the Social Security Administration for their reaction officially to the recommendations in the report rather than to ask these witnesses.

Senator COBURN. I am fine with that.

Senator COLLINS. That is probably a better approach, but if our witnesses have any insights that they would like to share with us as they think more deeply about that, I would welcome that also since they are on the front lines.

Senator LEVIN. All right.

Senator COLLINS. Thank you.

Senator LEVIN. We would then add that, welcoming your insights on that question or any other question that we have asked, and there will be questions for the records, and we will send along to the Social Security Administration a request that they give us their——

Senator COBURN. I would just add, a timely response is important to me. Oftentimes what happens in Committee hearings is we get an answer back 6 months later. I would consider that untimely. I just would let you know that.

Senator LEVIN. To put a finer point on that, we would appreciate your response in 30 days to that question, and we will ask the Social Security Administration to give us their official response relative to the recommendations or any other comments they may have within 30 days as well. We thank you both, and we go to our next panel.

We now will call our second panel of witnesses for this morning's hearing: Judge Douglas Stults, the Hearing Office Chief Administrative Law Judge at the Office of Disability Adjudication and Review of the Social Security Administration in Oklahoma City; Judge Thomas W. Erwin, the Hearing Office Chief Administrative Law Judge at the Office of Disability Adjudication and Review in Roanoke, Virginia; and, finally Judge Ollie L. Garmon, III, the Regional Chief Administrative Law Judge (Region IV) at the Office of Disability Adjudication and Review of the SSA in Atlanta, Georgia.

We appreciate all of you being with us this morning, and, again, we look forward to your testimony. Pursuant to Rule VI, which I believe you hear because I think you all were in the room, all of our witnesses who testify before this Subcommittee are required to be sworn, so we would ask you to please stand, raise your right hand.

Do you swear that the testimony that you will give before this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge STULTS. I do.

Judge ERWIN. I do.

Judge GARMON. I do.

Senator LEVIN. Thank you. The same timing system will be in effect. You will see a yellow light come on one minute before the red lights comes on, and we would ask that you limit your oral testimony to no more than 7 minutes, and your written testimony will be made part of the record.

I think, Judge Stults, we have you going first, followed by Judge Erwin and then Judge Garmon. Judge Stults.

TESTIMONY OF JUDGE DOUGLAS S. STULTS,[1] HEARING OFFICE CHIEF ADMINISTRATIVE LAW JUDGE, OFFICE OF DISABILITY ADJUDICATION AND REVIEW, SOCIAL SECURITY ADMINISTRATION, OKLAHOMA CITY, OKLAHOMA

Judge STULTS. Well, thank you, Mr. Chairman, Ranking Member Coburn, and Members of the Subcommittee. My name is Doug Stults, and I am the Hearing Office Chief Administrative Law Judge (HOCALJ) for the Oklahoma City, Oklahoma, Hearing Office. I have 4 years and 5 months of experience as an administrative law judge, and I have served 3 years and 9 months as chief judge of the Oklahoma City Hearing Office.

Prior to becoming an administrative law judge, I worked at the Oklahoma City Hearing Office for 12 years, 3 years as the hearing office director, 5 years as a group supervisor, and 4 years as an attorney-advisor. Prior to working for ODAR, I was a staff attorney for the UAW Legal Services in Oklahoma City for about 7½ years, and prior to that I practiced law in central Oklahoma for about 8½ years.

The Oklahoma City Hearing Office primarily serves central and western Oklahoma, specifically Oklahoma City, Lawton, Ardmore, and Clinton, Oklahoma, as well as Wichita Falls, Texas, and Santa Fe, New Mexico. Thus, the claimants served by the Oklahoma City

[1] The prepared statement of Judge Stults appears in the Appendix on page 77.

Hearing Office live in urban, suburban, and rural areas and are of diverse cultural and economic backgrounds.

The Oklahoma City Hearing Office is presently staffed with 13 administrative law judges, supported by 59 staff, specifically one hearing office director, four group supervisors, one administrative assistant, two hearing office systems administrators, 12 senior attorneys; three attorney-advisors, six paralegal-analysts, three lead case technicians, 13 senior case technicians; six case technicians; four case intake analysis; and two contact representatives. Fifty-seven percent of our employees in Oklahoma City have 6 or more years of ODAR experience and 39 percent have 16 or more years of ODAR experience, myself included.

In fiscal year 2011, the Oklahoma City Hearing Office achieved our regionally set dispositional goal, with 7,216 claimants served. We also completed all of our aged cases, which were defined as 750 days old. Thus far in fiscal year 2012, we have served 6,317 claimants. Through the end of July of 2012, Oklahoma City administrative law judges' dispositions have averaged 37.8 percent fully favorable, 3.2 percent partially favorable, 41.7 percent unfavorable, and 17.2 percent dismissals. Further, through the end of August of 2012, the Oklahoma City Hearing Office has had an average processing time of cases of 381 days. Our average cases pending per ALJ in the office is 591 days. The average age of pending cases overall is 258 days. Cases under 365 days old are 76 percent. Our receipts per day per ALJ are 2.31; hearing scheduled per day per ALJ is 2.39; and then hearings actually held per ALJ is 1.79, making a heard-to-scheduled ratio of 75 percent. Our dispositions per day per ALJ thus far in fiscal year 2012 is 2.15, and our dispositions-to receipt ratio is 103 percent.

As the Hearing Office Chief Judge, I strive to ensure that my hearing office handles hearing requests in an orderly manner. I discuss ALJ workload and case assignment regularly with our hearing office director, who oversees the direction of our staff involved in preparing cases for hearing. Generally, cases are worked up for hearing in hearing request order date, with the oldest cases prepared first. Our hearing office director then randomly assigns a minimum number of cases to each of our Oklahoma City ALJs, at least 40 cases per month so far this fiscal year. I personally use our agency's technology to manage performance, quality, and productivity of our ALJs, mainly with the help of our Case Processing Management System and Disability Adjudication Reporting Tools (DART), including the "How MI Doing" and the ODAR Management Information Dashboard. My top priorities include the handling of our oldest cases, the number of hearings scheduled and held by each ALJ, the pending of each ALJ, and our monthly dispositional totals. I pass on general information concerning each of these categories to all of our ALJs and then pass on specific information to individual ALJs as necessary.

I endeavor to work closely with our Oklahoma City ALJs. I have an unconditional open-door policy. I speak with all of our ALJs, both formally and informally, concerning questions, problems, or suggestions that they may have regarding individual cases as well as office policies and procedures. I regularly send emails to clarify

issues and procedures for our ALJs and also to share general information.

Now, while ALJs have qualified decisional independence under the Administrative Procedure Act, they must decide cases based upon the facts in each case and in accordance with agency policy. If I see a performance or quality issue with an ALJ in my office that I need to address, I will discuss that issue with the judge as soon as possible to ensure that the ALJ's actions are consistent with agency policy, and that the ALJ is performing at an acceptable level of productivity. While I exercise appropriate management oversight of the ALJs in my office and can take a number of actions to help ALJs improve their performance, I cannot and I do not interfere with or influence the ultimate decision in any case. In addition to my managerial duties, I hold hearings for disability cases regularly.

I thank you for the opportunity to be here today, and I will be happy to answer any questions that you may have of me.

Senator LEVIN. Thank you very much, Judge Stults. Judge Erwin.

TESTIMONY OF JUDGE THOMAS ERWIN,[1] HEARING OFFICE CHIEF ADMINISTRATIVE LAW JUDGE, OFFICE OF DISABILITY ADJUDICATION AND REVIEW, SOCIAL SECURITY ADMINISTRATION, ROANOKE, VIRGINIA

Judge ERWIN. Thank you, Mr. Chairman, Ranking Member Coburn, and Members of the Subcommittee. My name is Thomas Erwin, and I serve as the Chief Administrative Law Judge for the Roanoke, Virginia, Hearing Office. I have a little more than 3 years of experience as an ALJ and 1–1/2 years as a Hearing Office Chief ALJ.

Prior to becoming an ALJ, I was an attorney-advisor in the Roanoke, Virginia, Office of Disability Adjudication and Review for 3 years. Before joining the Social Security Administration, I served as a U.S. Navy JAG attorney on active duty for 5 years in San Diego and Port Hueneme, California, and was appointed as the Officer in Charge of the Naval Legal Service Office Branch Office in Port Hueneme. One of my duties in the Navy was to serve as criminal defense counsel in courts-martial cases; so yes, Tom Cruise did play me in the movie "A Few Good Men." [Laughter.]

I then worked in private practice in Southern California as a certified specialist in family law prior to joining the Social Security Administration in 2006.

The Roanoke, Virginia, Hearing Office serves a broad area of southwest Virginia and southeast West Virginia. This service area is a part of a cultural region commonly known as Appalachia. The region's economy, once highly dependent on mining, forestry, agriculture, chemical industries, and heavy industry, has become more diversified in recent times.

The Roanoke Hearing Office has eight ALJs, three of whom have fewer than 2 years of experience on the job. The newest judge has been with the office only since June of this year.

[1] The prepared statement of Judge Erwin appears in the Appendix on page 80.

The office has had significant ALJ turnover over the past several years and has lost eight judges to transfer or retirement. Social Security has assigned eight new judges in the same period; seven of these judges were new to the position or had less than 1 year of experience as an ALJ when they reported. The office has 48 employees.

For fiscal year 2012, through August, the Roanoke Hearing Office has received 3,690 hearing requests, an average of 335 cases per month. We have issued 3,643 decisions, so we have processed close to 99 percent of our total receipts. We have just under 4,700 cases pending in our office, an average of over 580 cases pending per judge. Our average processing time is 432 days from the request for hearing to decision.

The Roanoke hearing office has an allowance rate of 57 percent for fiscal year 2012. The judges have an allowance rate of 55 percent, with most of the judges having an allowance rate between 45 and 57 percent. The difference in allowance percentages between the overall office rate and the judges represents favorable decisions processed by our senior attorneys.

As a chief judge, it is my job to make sure that the office functions smoothly and that we process cases fairly and efficiently. I strive to ensure that my hearing office handles hearing requests in an orderly manner. I work with three other office managers to make sure cases are worked up and ready for a hearing, that they are assigned to judges to allow them to hold hearings, and that writers draft legally sufficient decisions. I monitor the workloads of the judges to make sure they have sufficient cases at various stages of the process to allow them to review cases before scheduling, hold hearings, and issue decisions.

A hearing office has many working parts, all of which need to operate smoothly to maintain both quality and productivity. The senior case technicians prepare the files and get them ready for hearing; the judges hold the hearings; and then the writers must draft, based on the directions they receive from the judges, legally sufficient and defensible decisions. As chief judge, I work with my fellow supervisors to manage performance, quality, and productivity at each phase of a case's development and resolution.

I work with the ALJs in the office to make sure they are aware of monthly and yearly goals, that they move cases through each stage of the process in a timely manner, and that they issue quality decisions as quickly as possible. If the judges are having a problem, I help them resolve the issue so that they can continue doing their job. I try to lead by example.

While ALJs have qualified decisional independence under the Administrative Procedure Act, they must decide cases based on the facts in each case and in accordance with the agency's policy. If I see a performance or quality issue with an ALJ that I need to address, I will discuss the issue with the judge as soon as possible to ensure that the ALJ's actions are consistent with the agency's policy and that the ALJ is performing at an acceptable level of productivity. While I exercise appropriate management oversight over the ALJs in my office and can take a number of actions to help ALJs improve their performance, I cannot and do not interfere with or influence the ultimate decision in any case.

Thank you for the opportunity to be here today. I would be happy to answer any questions that you have.

Senator LEVIN. Thank you very much, Judge. Judge Garmon.

TESTIMONY OF JUDGE OLLIE L. GARMON III,[1] REGIONAL CHIEF ADMINISTRATIVE LAW JUDGE, ATLANTA REGION, OFFICE OF DISABILITY ADJUDICATION AND REVIEW, SOCIAL SECURITY ADMINISTRATION, ATLANTA, GEORGIA

Judge GARMON. Thank you, Mr. Chairman, Ranking Member Coburn, and Members of the Subcommittee, my name is Ollie L. Garmon III, and I serve as the Regional Chief Administrative Law Judge in Region IV, which is commonly known as the Atlanta Region. The Montgomery, Alabama, Hearing Office is one of the offices in the Atlanta Region. I have 21 years' experience as an ALJ, 3 years as a hearing office chief, 4 years as an assistant to the regional chief, and 9 years as the regional chief judge.

As the regional chief judge, I provide general oversight for all program and administrative matters concerning our hearings process in the Atlanta Region. The Atlanta Region is composed of 37 hearing offices, nearly 400 administrative law judges, and a total staff of nearly 2,300 people in the following eight States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. This region serves a population of about 60 million citizens. We have approximately 25 percent of the agency's hearings caseload, which results in more than 200,000 decisions per year.

I began my legal career in the private sector as an associate for a law firm; I then became a sole practitioner, after which I organized and was a partner in a law firm. During this same time, I served in the public sector as a city attorney and was elected county prosecuting attorney for a 4-year term. In 1979, I was elected to a 4-year term to a full-time judicial position of county court judge where I also served as a juvenile court judge. Afterwards, I was appointed by the Governor of the State of Mississippi to the position of Commissioner of the Mississippi Workers' Compensation Commission for a 6-year term.

One of the hearing offices in Region IV is located in Montgomery, Alabama. The Montgomery Office's service area includes Alexander City, Anniston, Auburn, Demopolis, Montgomery, Opelika, Selma, and Tuskegee. The Montgomery Office currently has ten judges. We expect two new judges to report for duty on September the 24th of this year. The support staff for the ALJs includes a mix of attorney-advisors, paralegal specialists, and legal assistants. We have hired at least half of this office's staff within the past 3 years. The office has a high transfer rate for ALJs, who frequently request reassignment to other offices.

In fiscal year 2011, the Montgomery Office received 8,357 cases for adjudication and issued 7,252 dispositions. In fiscal year 2012 to date, the office has received 6,540 cases for adjudication and issued 6,246 decisions. The Montgomery Office currently has 8,323 cases pending, and the current average processing time is 430 days. The rate of average dispositions per ALJ per day is 2.37.

[1] The prepared statement of Judge Garmon appears in the Appendix on page 83.

Let me emphasize that while I can take actions to ensure that ALJs move their caseloads and apply the law and our policies correctly, the Administrative Procedure Act grants all ALJs qualified decisional independence. Qualified decisional independence means that ALJs must be impartial in conducting hearings. They must decide cases based on the facts in each case and in accordance with the agency's policy, as set out in the regulations, rulings, and other policy statements. It means, however, that ALJs make their decisions free from agency pressure or pressure by a party to decide a particular case, or a particular percentage of cases, in a particular way. If we see a performance or quality issue with an ALJ that we need to address, we will discuss the issue with the judge as soon as possible to ensure that the ALJ's actions are consistent with the agency's policy and that the ALJ is performing at an acceptable level of productivity. While we exercise appropriate management oversight over the ALJs in our offices and can take a number of actions to help the ALJs improve their performance, we cannot and do not interfere with or influence the ultimate decision in the case.

Thank you for the opportunity to be here today, and I would be happy to answer any questions that you may have.

Senator LEVIN. Thank you so much, Judge Garmon.

Let me start by asking the same question that I asked of our earlier panel. If you take a look at Exhibit 22,[1] which is the 2011 report issued by the Social Security Administration's Quality Division—are we short a book up there?

This is the Final Actions Report, the Division of Quality, and it shows that in your regions the error rate, I guess—we will simplify it—was 24 percent in Region III, 23 percent in Region IV, and 26 percent in Region VI. The national average is 22 percent.

Were you aware of this report prior to the hearing? Was this made available to you before we let you know that we wanted you to testify? And were you familiar with it before that time? Judge Stults.

Judge STULTS. Yes, I was aware of it. I had seen it.

Senator LEVIN. Good. Judge Erwin.

Judge ERWIN. Yes, sir.

Senator LEVIN. Judge Garmon.

Judge GARMON. Yes, sir.

Senator LEVIN. And what was your reaction to it, Judge Stults?

Judge STULTS. Well, I would begin by saying this is just one of many tools that is at the disposal of a hearing office chief judge to determine quality. This is important. There are policy issues that are not well covered in decisions, certainly as well as they should be. Another such tool is something I mentioned in my opening remarks. Recently the agency has given us access to look at our AC affirmation rates, the How MI Doing. I have used that as a tool because it now is looking more at unfavorable cases, but generally I have found that if a judge is doing quality unfavorables, they are probably doing quality favorables as well. But, quite frankly, perhaps the best gauge of quality within a hearing office is the staff itself, decision writers in particular. They are going to come to management in general, and they will come to me in particular and

[1] See Exhibit 22, which appears in the Appendix on page 889.

tell me what problems any particular ALJ may have both in their conduct of a hearing and/or in their decisional instructions.

Senator LEVIN. Judge Erwin, what was your reaction to the report?

Judge ERWIN. Well, I think I was a little fortunate in that the Roanoke Office had closer to a 10-percent error rate, so I was glad to see that coming out of my office. I also think that we have all talked about——

Senator LEVIN. Your office was much lower than the other offices in the region? Is that what you were——

Judge ERWIN. That is what my understanding was, yes, when I saw the report.

Senator LEVIN. OK.

Judge ERWIN. So I just happened to be fortunate there.

Senator LEVIN. So your reaction was relief? [Laughter.]

Judge ERWIN. I lost my train of thought for a minute. This is one tool that we have. I think we have all discussed and acknowledged that this does not talk about whether the decision was correct, but whether there was an error in the policy. A lot of times what we have to talk about when we are at the front lines and writing cases is about a balance, trying to do quantity and trying to do quality.

In the past, as a decision writer, I can say that I was writing decisions between 2006 and 2009, which is when a lot of the cases you reviewed were happening. A lot of times we were told a fully favorable decision is where you save time. So I would not be surprised if you looked at some of my old decisions and I did not evaluate every opinion that was in the record and cite every conflicting evidence because we were giving greater emphasis—and we still have the writers give greater emphasis—to the unfavorable decisions.

So, again, it goes down to quantity versus quality. Again, I would say I was a little surprised to see that the number was that high, but, again, we would need to get into the nature of the decision to see whether the decision itself was correct. And it seems like what we have got is more a problem of documentation and making sure the decision instructions and the decisions themselves comply with the policies as opposed to worrying about the results here, again, making sure that the decisions themselves are better written. And I can say that Judge Bice, our Chief Judge, has recently this year, through trainings and directives, stressed that. And I have had meetings with my judges and my decision writers to stress that a favorable decision needs to have a fully articulated residual functional capacity, and it needs to be supported with documentation.

Senator LEVIN. Judge Garmon.

Judge GARMON. Well, I guess humorously I would say that I was happy I was not on top of the list, but also sad at the same time that we were not lower than we were as far as personal feelings went.

But, of course, again, it brings forth the admonition that we have got to be more careful, and we agree with you with regard to the quality of the decisions that are going out the door and the possible problems. And with the number of offices that we have in our region, of course, we had some that were higher, some that were

lower, a mix, as you might imagine. So, yes, we are aware of this, certainly working on this.

Senator LEVIN. If you were given the so-called error rate ALJ by ALJ rather than office by office, would that help you in terms of your counseling with the ALJs? If you knew that there was an ALJ that had insufficient findings in 40 percent of the cases and you had another ALJ that was insufficient in 5 percent of the cases, would that not give you some guidance as to which of your ALJs needed some additional counseling and training? Would it be helpful to know those judge by judge? Judge Stults.

Judge STULTS. Yes, and, in fact, we have that. Again, as I said a second ago, under our DART report, the "How MI Doing," it breaks down for the HOCALJ the AC affirmation rate for every judge in my office, and that started this summer. I have used that for three different judges—two informal discussions, one formal discussion. And at least I believe it was effective in bringing to the attention of two of those judges that they were making mistakes they were not aware of. So I was very pleased when this became available to us, and I use it regularly.

Senator LEVIN. That is the AC——

Judge STULTS. And, again, that is for unfavorables, but, again, as I said a second ago, if a judge is deciding an unfavorable case well, providing sufficient rationale and then—of course, there is also a decision-writing aspect in here. But if they are doing unfavorables well, generally they are doing favorables well.

Senator LEVIN. Well, but my question is a little different. If the breakdown for the entire office is useful, would not a breakdown of this particular rate be useful judge by judge?

Judge STULTS. Certainly. It would be more information. But there is a lot of information already available to a hearing office chief judge.

Senator LEVIN. All right. But if this were doable, practically, if we could get these numbers judge by judge, if they were available to the chief judges, that would add some additional information for you?

Judge STULTS. I believe it may help affirm a trend that would already be known to exist.

Senator LEVIN. Hopefully?

Judge STULTS. Probably.

Senator LEVIN. Probably, OK. Judge Erwin, would that be useful to you?

Judge ERWIN. Well, I would again agree that, as chief judge, I already review all of the remands that come in, whether they are the own-motion ones where they are looking for policy problems or whether they are the remands where a case is being remanded for further action, either by the Appeals Council or the district court. I do pick up on trends. I recently had training with both the judges and the writers because there was a problem with the criteria analysis under the psychiatric review technique that sometimes the judges were not having a proper residual functional capacity evaluation with the criteria as stated earlier in the decision. And what I did was I addressed that with the judges and the writers to say if the judge makes it a problem, to go ahead and let me know, and we will make sure the decision goes out in a correct way.

To answer your question, I think any more information along those same lines would be helpful.

Senator LEVIN. I am going to wait until Dr. Coburn asks the question about workload because I have got to tell you, I agree with him. Just how does a judge do three or four or five cases a day, not just looking at the material I guess in a file, but also having read presumably hundreds of pages before that? So I am not going to ask that question, but if for some reason Dr. Coburn does not ask that question in his round, I will be asking it. It is stunning to me. I know he is a fast reader, and he is amazing, how much information he soaks up. But when he says he could not do it, I got to tell you, I am a little bit slower than he is, but I could not come close to doing it. And I would like to know, after listening to your answer to him, I am sure, I am curious as to that same question. How can you do a quality job with that kind of a responsibility to read that many pages?

Dr. Coburn.

Senator COBURN. Do you want me to ask that question first? [Laughter.]

Senator LEVIN. Well, if you do not ask, I will ask it on my second round. I did not want to take your time asking it.

Senator COBURN. Well, first of all, let me welcome all of you. Thanks for being here and thanks for what you do. This is hard work to make good decisions on this stuff. It is not easy.

Judge Erwin, you said you knew for your office what your rating was, and it was 10 percent.

Judge ERWIN. Correct.

Senator COBURN. Do each of you all know for your office what it was?

Judge GARMON. Yes.

Senator COBURN. And what was it?

Judge GARMON. Well, I have a number of offices.

Senator COBURN. Well, for your area, what were you rated?

Judge GARMON. What was I what?

Senator COBURN. Rated. In other words, Region VI I think is Oklahoma City.

Judge GARMON. Yes.

Senator COBURN. It was 26 percent.

Judge GARMON. Yes. We were 24 percent.

Senator COBURN. What about your office?

Judge GARMON. As I said, they varied.

Senator COBURN. What was the range?

Judge GARMON. Off the top of my head, I do not remember, sir, but I can get you that information.

Senator COBURN. You were 24, though, in your area.

Judge GARMON. Yes, sir. Average, yes.

Senator COBURN. And how about you, Judge Stults?

Judge STULTS. As I recollect, we were a bit above regional average. I know it was in the 20s. Again, I do not remember that off the top of my head.

Senator COBURN. OK. Fair enough. Some of the ALJs we have talked to during our investigation stated that the agency puts a lot of pressure on them to get the cases through. Do you think there

is an inordinate amount of pressure put on ALJs to move the cases? Anybody can answer.

Judge ERWIN. I will take this. I do not think there is an inordinate amount of pressure. I think there is pressure in any job. When I was in the Navy, there was pressure. When I was in private practice, there was pressure. The staff in our office has pressure to get the job done. So everybody in any job has pressure to get the job done.

As a public servant, I am aware that we still have a backlog of 800,000 people, claimants, awaiting a hearing on their claim even though we are holding more hearings than we ever have and making more decisions. For a number of factors relating to the economy and the baby boomers aging, we are getting a record number of receipts as well.

I do personally believe that the goal of 500 to 700 is attainable, mainly because I am doing it. I review cases before they get scheduled. Sometimes they can be approved without having a hearing. I then review the case again before a hearing, and I then issue decision-writing instructions and get the cases out. I am going to be between 500 and 600 this year, as I have been for I guess all 3 years I have been an ALJ.

So is there pressure to get decisions out? Of course. Is it inordinate pressure? I do not believe so.

Senator COBURN. So how can somebody effectively do 1,500 cases a year?

Judge ERWIN. I do not want to speak for that person, but I do not think I would be able to get 1,500 cases out in a year the way——

Senator COBURN. Do you know anybody that could get 1,500 cases out in a year? The number one guy in your law school, could he have gotten 1,500 cases out in a year, or gal in your law school? Because most of the time they are gals now, and they are smarter than we are and tougher than we are. That is coming from an obstetrician's viewpoint. [Laughter.]

Senator LEVIN. Is that physiologically or is that——

Senator COBURN. It is called two X chromosomes. We are missing one little arm on one chromosome.

Judge ERWIN. I think the number one guy from my law school probably would spend too much time making sure the citations are correct. [Laughter.]

He might be overly perfect.

Senator COBURN. So the guy in the middle of your class.

Here is the point. I will go back to what Senator—in Judge Stults' office, we had a guy do 5,100 in 3 years. He is also the same guy Judge Stults has written reviews on four times in 3 years. Would it not make sense to you that somebody that is deciding that number of cases would have bigger quality problems, one? And if you have bigger quality problems, the potential for an error in the ultimate decision, whether denial or acceptance, would seem to me by logic to go up. Would you agree with that or disagree with that?

Judge ERWIN. I would probably agree that when you have judges that issue an inordinate number of cases, whether they approve an inordinate amount or disapprove an inordinate amount, it makes our impartiality look suspect when these judges are so far from the

norm. And if the goal is between 500 and 700 cases and someone is doing 1,500 cases, I do think it could create an appearance that they are not giving the case the full attention that it needs to get.

Senator COBURN. Let me ask just theoretically all three of you, if you have somebody that is at a performance level based on number of cases done that is far above everybody else in your office under your authority, what do you do? I mean, what is your management approach to that? Do you say, "Gosh, these are good cases," or "Thanks for the job"? Or does it raise a question in your mind of comparison? There are stellar individuals, I understand, that can accomplish more than others. You know, they do not sleep. They do not have a social life. All they do is work. I understand that. But what is your thought process on this?

Judge GARMON. I will speak for the regional office and let these two judges speak for what goes on at the hearing level. When we review our data and we see large numbers, then certainly it raises a flag, and you sit there and you look at it and you think, "Why is this person getting this much out?" The opposite side of the fence is you see somebody producing hardly anything, and you ask the same questions.

We then follow up at the regional level. We have field liaison officers who are in contact almost every day with our field office management, our hearing office management. And we start working with the hearing office chief to determine what is going on here, and we begin to review decisions or we ask questions. Is there something inordinate about the cases that they are getting? In some areas you may have a large number of dismissals, for instance.

So there are a lot of factors that have to be looked into, but, yes, it raises questions, and we do begin to work with the hearing office management to determine what is going on in that particular hearing office with that particular judge. And we do that without necessarily having the hard data with regard to quality. We can already go in and begin to review their decisions that they just made to determine whether or not something is going on. It is not a perfect process, and it takes hours to go through some of these decisions. We listen to sometimes also the hearings, and we have realized, of course, that in some cases these judges were missing in areas where there were quality questions.

Senator COBURN. Does anybody else want to comment on that?

Judge STULTS. I can tell you exactly what I did when I was appointed chief judge. Yes, you have many different statistical reports that can give you all sorts of information from how many dispositions per month to average processing time to number of hearings heard and scheduled.

In my case, when I became chief judge, you do look at the fringe, both too many and too few, and I counseled several judges. This judge that we are talking about in particular, he was not holding enough hearings, so we started getting him hearings, which, of course, cuts into the time available to look for On the Record (OTRs) cases. That first fiscal year his number of OTR cases dropped dramatically, and it has taken 3 years, but this judge that we are talking about, this year as we speak, he has 519 total dispositions for the year. His pay rate is about 54 percent. He is back

into the middle. And this was a concerted, planned, organized effort, both formally and informally, to move him there. And when I was appointed chief judge, I had several judges that needed some advice and guidance to increase their number of hearings, to do work more timely. This judge we are talking about is just one of several.

Senator COBURN. Would it be helpful or do you see a correlation between large numbers of cases that are handled and the quality parameters—not deciding it right or wrong, but the quality parameters, in other words, meeting the guidelines under which you are to work. Is there a correlation, in other words, as the number of cases go up, do the quality parameter problems increase in your observation? I am not asking you for science or stats or anything else. What is your feeling about that?

Judge STULTS. Well, in my observation, most judges are good judges, but they are very poor decision writers. That was not their function. And, again, in the case of the judge we are talking about, he took upon himself for some very unique reasons to write these himself. In retrospect, that was probably not the best decision.

So if a judge devotes their full time and attention to reviewing case files, working with the staff to prepare for hearing, goes in, holds a fair and complete hearing, and then makes a timely instructional document to a decision writer, who then is trained and has more time to really delve into the issues and to make sure a legally sufficient decision is written, then, yes, I think judges can be very efficient and very productive, well above the 500- to 700-case range.

Senator COBURN. You mentioned the words "unique reasons."

Judge STULTS. Very unique reasons.

Senator COBURN. What do you mean by that?

Judge STULTS. Well, it is kind of like the movie "The Perfect Storm." During these 3 years we were talking about for this particular judge, he was chief judge. Hence, he could assign cases to himself. He could assign as many cases as he wanted to himself. That cannot happen anymore. This will never happen again. We are limited to 1,200 cases a year; and, number two, a judge cannot assign himself a case. I cannot even assign myself a case. I have to have a member of management assign me a case.

So that is what happened. He was in charge. For a number of reasons—and I do not want to take too much time here.

Senator COBURN. No, I do not want you to go into the details.

Judge STULTS. But I have explained it to Mr. Dockham, and it will not, it cannot happen again.

Senator COBURN. I am over. I will go back to——

Senator LEVIN. You can keep going if you want.

Senator COBURN. No. Go ahead.

Senator LEVIN. Going back to this document that we have here, Exhibit 22, and this Final Action Report. Region VIII here has a very low rate. Now, again, we are not looking at erroneous decisions. That is not the judgment. The question is judgments—are they problematic. These are decisions that have some errors, that policy was not followed. That does not mean that, again, they reached the wrong decision. I want to emphasize that. We do not

know whether they did or not. But these are cases which have problems in them in terms of following the rules and the process.

Have any of you talked to the chief judge in Region VIII and try to ask him, "How come your rate is so much lower than our rate?" Do you know who that is, by the way? Do you guys get together every year, the chief judges?

Judge GARMON. Yes, sir, we get together. In fact, more often that that, and we are often on the phone talking to each other. The judge in that region is recently stepping down. Her name is Marsha Stroup, and Judge Stroup is a very fine judge.

This particular region has been a region that has performed well over the years historically within ODAR. It is not a large region insofar as the number of offices and judges and so forth. And she has managed that region very well, and so did her predecessor.

Senator LEVIN. Could their caseload be lower? Could that be a reason, do you know?

Judge GARMON. Caseload being lower? I would have to look at some statistics, but there is a possibility, but I really do not know, Mr. Chairman. I would not know how to answer that question.

Senator LEVIN. Do you have any other comments about talking to the chief judge in Region VIII to figure out why they are so much lower than the national average? Have either of the other two of you done that?

Judge STULTS. No.

Senator LEVIN. OK. Judge Erwin.

Judge ERWIN. I have not spoken to them.

Senator LEVIN. All right. On page 9 of the report, there is a three-page list identifying in a more detailed way the nature of the problems that have been found in these cases. On page 10, in the middle, the listing indicates 46 percent of the problems involved, or about half, are inadequacies relating to identifying and evaluating the evidence. Consultative examiner, the opinion was rejected without adequate articulation. A non-examining source, the opinion did not identify or discuss that source. Residual functional capacity, the effects of a combination of impairments inadequately evaluated.

Have you looked at those specific identified problems that are common to see if those problems are common in your offices? Do you take this report and put it to that kind of use? Judge Stults.

Judge STULTS. Well, again, I have been with this agency 16 years, and I think everyone would agree the top ten reasons for remand have not changed much at all over the last 16 years. This information is available and is being shared. Again, I go back to the website, the "How MI Doing" that every judge has at their fingertips. And Judge Jonas and Judge Bice talked about the ability. You can drill down, see your remands and see the reasons, and now they are adding a feature that will help explain the policy that should have been followed.

So this is a recent development, but it is one of many recent training initiatives that this agency has undertaken. So, yes, we have talked about reasons for remands at judges' meetings, and I think probably that is true for all three of us.

Senator LEVIN. Now, I asked the first panel this question about the grids as to whether or not the guidance as to how those grids

are to be used is clear, and their answer was, yes, sometimes it is guidance, sometimes it is direction, it is mandates.

Is it clear to your judges how these grids are to be used, or is there any uncertainty or confusion? Because apparently our staff found that there was some uncertainty among ALJs as to whether these were binding or whether these were goals?

Judge ERWIN. I think it is pretty clear to the judges.

Senator LEVIN. You think it is?

Judge ERWIN. Yes.

Senator LEVIN. Judge Stults.

Judge STULTS. Oh, yes, very clear.

Senator LEVIN. OK.

Senator COBURN. Is it clear that they are binding, or is it clear that they are guidance?

Judge STULTS. Well, both. That is the function of the grid—if there are only exertional functional limitations, then the grid directs an outcome. But if there are non-exertional functional limitations, then the grid is a framework for either a favorable or unfavorable outcome.

Senator COBURN. So why have we seen the shift from 1:4 to 4:1 from medical reasons for disability to grid-related disability over the last 5 years in this country?

Judge STULTS. Age of the claimant. The grid really does not kick in until 50. As people get older—and we are seeing a lot or at least I am seeing a lot of older claimants—the grid kicks in at 50 and 55 when you are——

Senator COBURN. So what you are saying, it is demographic.

Judge STULTS. Yes, that is my personal experience.

Senator COBURN. Any other comments?

[No response.]

Senator COBURN. Thank you.

Senator LEVIN. No, that is fine. There is a demographic shift, I know, but not quite to that extent. I do not think it is 1:4/4:1. Are there any other reasons that you can think of besides demographics as to why there has been that shift?

Senator COBURN. We heard earlier from both our chief appellate judge and chief judge that the one of the requirements that they wanted to firm up on was residual functional capacity and medical criteria. If, in fact, that is the case, if the medical criteria is actually looked at more firmly, you would—I would tend to think we would shift given—forget age for a minute. Those under 50, we would see more back towards medical criteria as a basis for disability than functional residual capacity. Would you disagree with that statement?

Judge ERWIN. Do you mean a finding under Step 3 of the sequential evaluation process?

Senator COBURN. Yes.

Judge ERWIN. Is that what you are talking about?

Senator COBURN. Yes.

Judge ERWIN. I guess in my experience, generally the DDS is going to find a lot of the Step 3 cases and pay those. And so the ones we get are the ones where the medical evidence was not so clear as to, again, have a presumptive disability by meeting a list-

ing where you have to do a more thorough analysis under Steps 4 and 5. I do not know if that answers your question or not.

Senator COBURN. I think to go back, Mr. Chairman, one of the things that has happened is we have seen a large percentage of people, given the severe dip in the economy, that were at that age group that were operating with significant disabilities now shift off of employment, probably not by choice, and go this direction. So I think that can—the demographic shift probably can explain for it, but it should not explain for it in the future if the economy comes back up. So it is one of the things we are going to be tracking over the next couple of years, what is utilized.

You all were all present

Senator LEVIN. Just to interrupt you, and I am done with my questions, I am not sure it can explain that great a shift, though, demographically, can it?

Senator COBURN. I think it can. If you have auto workers, we hit this economy, and they are 50 years of age, and they have been working with arthritis in their knees and back and hands and elbows, and all of a sudden they are laid off, you are going to see a disproportionate number of those——

Senator LEVIN. I agree.

Senator COBURN. —who qualify under the disability guidelines go and get that; whereas, if they still had that job, they probably would not.

Senator LEVIN. I think that is true.

Senator COBURN. And so functional residual capacity at that age, they can go to the grid, be gridded, and done.

Senator LEVIN. But is the demographic shift in terms of the age of the applicants that dramatic that it explains the 1:4 versus 4:1 ratio in terms of the use of the grid? It is hard to imagine it, but it could be. And if it is, so be it.

Senator COBURN. Well, the other question that would go to that is: Can gridding be done at the DDS level? And the answer is yes. So why would that not be taken out before it gets to you?

Judge GARMON. Senator Coburn, it depends on the information that the DDS has in front of it at the time. Remember, the DDS is at the very front end of the process. By the time the case gets to an administrative law judge, a lot of other medical evidence may have gotten into the file at that particular point in time. I can give you a personal example.

A friend of mine, Tommy Warren, who was Director of the DDS in Alabama—and I was the Hearing Office Chief in Birmingham at that time—we were both puzzled at some times why they denied a case at the DDS level and we would get it and sometimes pay it on the record at the hearing office level. So we got together, we got his doctors, we asked him to give us a sample of the cases that he was interested in, and so we got the doctors to come over and look at those cases, considering the case and what we had in the case at that particular time.

When they came over after looking at the cases, they really did not disagree with these files that we had paid on the record because there was additional medical evidence in the file or the 12-month period had gone by at that particular point in time. The

claimant was still disabled, or at least there were medical records in the file that tended to indicate that.

So, yes, they do apply, but they apply it with what they have at that point in time.

Senator COBURN. I referenced in my opening statement kind of some midnight advisories and cheaply bought information that ends up showing up late in the process. And as a physician who has testified before an administrative law judge before, it is true that the medical record continues to mature during these cases. But it is also true that sometimes we are selecting the medical information we want presented in the case. And so tell me how you all decide a balance between here is what Tom Coburn, a primary care physician, has said about this patient's ability to work under the guidelines of disability that we use in terms of range of motion, etc, lifting capabilities, and observation, versus somebody who saw this patient for 10 minutes and has written another one that says they are totally disabled, and you have got conflicting information. Here is somebody who has taken care of somebody for 15 years and says they are not disabled. Here is somebody that saw them for 10 minutes and says they are. How do you balance that information?

Judge GARMON. Well, first of all, we have a ruling that says that a treating physician's information is to be given more credibility under our guidelines, and so we weigh that evidence more than we would somebody coming in at the last moment with a 10-minute examination or however you described it. So the judge in his mind is actually looking at all of that. We certainly are under a duty to try to get as much of the claimant's treating information as we possibly can that is there.

Now, I will tell you also that, when I was hearing cases in one State—a lot of times claimants just did not get any medical information, often because the fact that there was abject poverty and sometimes I would have a claimant walk in that I could just tell had some serious problems here and I am not a doctor, but I could tell. And I would send that person out to have a consultative examination, because if I had gone ahead at that particular point in time, I probably would not have found them disabled.

So a judge is using his common sense. He is looking at the demeanor of the claimant. He is looking at everything that is going on in that hearing at that particular point in time and trying to make the best decision he can with the authority that he has got and with the instructions that he has got on how he is to decide those cases.

Senator COBURN. Let us go to Exhibit 4,[1] Alabama Case 69. The role of attorneys was something that a lot of the ALJs raised as sometimes a problem. In this case, this judge relied primarily on a three-question form filled out by the claimant's doctor the day before the hearing. That form was requested and sent to SSA by that claimant's attorney.

Exhibit 4b[2] is a standard Notice of Disapproved Claim from SSA when a case is denied. It shows the case was denied on September 26, 2008.

[1] See Exhibit 4 which appears in the Appendix on page 347.
[2] See Exhibit 4b which appears in the Appendix on page 352.

Then if you look at Exhibit 4g,[1] you will see a form submitted when a claimant hires a representative, this one dated October 10, 2008, 2 weeks after being denied.

The questions I have for—and all of you are free to comment on this. How common is it for someone to get an attorney if they are denied the first time? Fairly common.

Judge ERWIN. Yes, sir.

Senator COBURN. All right. Do people who hire attorneys usually do so at the beginning of the process or the middle of the process?

Judge STULTS. Middle.

Judge GARMON. Middle, I would say.

Senator COBURN. OK. What does it say about our program that people need to have an attorney to process through this system? Any comments?

Judge STULTS. I would just say that our local bars are much more aggressive in locating claimants perhaps today than they were 10, 15, 20 years ago. I was a private practitioner 30 years ago in central Oklahoma, and you did not see ads, you did not see TV or radio commercials that some of our representatives are now playing pretty regularly. And I think this goes back to the grid question. I think some of our representatives focus in on older folks seeking to see if they might want to become claimants.

So I think it is the sophistication of the bar in reaching out to claimants to become a part of the process.

Senator COBURN. Yes.

Judge ERWIN. I do not think a claimant needs to have a representative. To me, one of the best roles a representative does is get me the medical evidence in a timely manner and get the claimant to the hearing. If the claimant is going to come to the hearing, and if they filled out the forms in advance, we can request their medical records, and then I can ask questions of the claimant. If we do not have the medical records, I will have to ask the claimant at the hearing: "Do we have everything? Is there any doctor that you have seen so I can get the objective findings?" And then maybe I have to have a supplemental hearing, or I have to look at the records that I get.

But there was a question earlier. Are we too claimant friendly? I do not think we are too claimant friendly, but we are very claimant friendly. And in the instance of a claimant without a representative, one of the hats we have to wear is to help them develop the record. And if I have a claimant that is going to appear and is going to cooperate and help me develop the record, I do not believe that person needs a representative.

Senator COBURN. OK.

Judge GARMON. By the same token—and I do not necessarily disagree with what my fellow judges said, but also at the same time—you sometimes have people who come in and their educational level is such that they really do not understand the process. A lot of times their memory, past medical treatment, and things of that nature are very limited and where I have found that the representative is especially helpful is in that and also in gathering things other than medical evidence. Sometimes there can be employment

[1] See Exhibit 4g which appears in the Appendix on page 375.

records that are missing from the file or other things like that, or the lack thereof.

So there can be a very valid role for having a representative in a case, and I think sometimes they are very well served by having a representative.

Senator COBURN. OK. Well, let us continue on with this one case because I want to kind of use it. Go to Exhibit 4i,[1] if you will. In this case, a medical expert was asked to testify about the clinical assessment of pain. Do medical experts usually get evidence in advance of the hearing?

Judge STULTS. Yes.

Judge GARMON. Yes.

Senator COBURN. OK. How long do they usually have to look it over?

Judge STULTS. In our office, I would say they get at least 20 days prior to hearing.

Senator COBURN. OK. Is it generally a good practice for medical experts to see the evidence for the first time at a hearing?

Judge STULTS. No.

Senator COBURN. All right. So on page 3 of the hearing transcript, page 4j, the judge asks the doctor what he thinks, the doctor read the document into the record and said, "So that would preclude an employment." So here is a case where a doctor had never seen the information, read the statement, and a decision is made. Is this really expert testimony when all we are doing is reading the statement by an expert and answering one question?

And how does that fit into the quality parameters that you all are supposed to work under?

Judge GARMON. Of course, this is where I am trying to put myself in the mind of the judge and the doctor and everybody else in there. I cannot really do that. But, I have seen doctors that I respect be able to give decisions, and valid decisions, who I have seen give decisions both ways—I mean, not just one way or the other way, but who have in cases read reports. Sometimes we get reports at the last moment. And so I have also—if the doctor felt that he needed more time—asked for more time to review the record. So in this particular case, I cannot say. I was not there. I do not know.

Senator COBURN. Well, if you go and look at the record, you can see what was turned in, and right there, and it is a subjective assessment. It is not an objective assessment.

Let me ask a couple questions, because I know we want to close out this hearing. Do you all agree that you should not get last-minute evidence before a hearing? In other words, there ought to be a time frame that you get to look at it, instead of it being given to you the day before or the day of the hearing? Do you agree, if you have information that is coming in that is new, that has to be looked at in light of the whole record, that to spring that on you the morning of the hearing is inappropriate and that we ought to have some guidelines for a cutoff date for the admission of information, and if new information comes, that we ought to delay the hearing rather than continue the hearing with new information that had not been seen in light of the rest of the record?

[1] See Exhibit 4i which appears in the Appendix on page 379.

Judge ERWIN. I will certainly agree that it makes it difficult when you get sprung a large amount of evidence the night before or the day of the hearing.

Senator COBURN. Any disagreement with that?

Judge GARMON. No, sir. I mean, that is certainly reasonable. I would say also it depends on the evidence. If it is just a little bit, it does not make much difference. But if they come in with a stack of papers that high, yes, that is a whole lot of——

Senator COBURN. Or if it is a major—or maybe it is one piece of evidence, but it contradicts everything else in the record.

Judge GARMON. Well, then, that is a different question.

Senator COBURN. That is right.

Judge GARMON. Yes.

Senator COBURN. So the point is late evidence ought to be considered in a thoughtful, intelligent way and not because it is just immediate to the hearing, and there is nothing wrong, if you are going to submit late evidence, fine, let us just delay the hearing to give the ALJ the time to consider that in light of the whole record.

Judge GARMON. Yes, sir. I have actually continued cases where I have had too much at one point.

Senator COBURN. All right. One other thing that I would like to ask you, because several ALJs have told me that they rely often on the Minnesota Multiphasic Personality Inventory (MMPI), or did until they were told they could not use it anymore as an assessment capability of the individual. And I can testify as a practicing physician up until January of this year that that is a valuable tool used throughout the medical community to assess large, difficult areas in terms of both personalities but also objectivity in terms of the statements of the patient as well as their overall condition.

Do any of you have an opinion about whether or not you ought to be able to use tools that are out there that will actually help you decide the case better and whether or not the Social Security Administration ought to restrict your ability to use those tools since you are the decider of fact?

Judge GARMON. Well, since medicine is a higher art than being a judge—— [Laughter.]

Senator COBURN. I do not know that it is. You know, we say 60 percent art, 40 percent science. My lawyer friends tell me that being a judge is 60 percent the law and 40 percent interpretation of the law. So I think they are a little bit reversed.

Judge GARMON. All right. The point, though, is that I think along this line it would have to be deferred to our policy people. We did not make that decision.

Senator COBURN. No, no. I am asking you about your opinion of the decision. You have an independence. I mean, we have heard from your bosses today that said they cannot get involved in interfering with your decisions, but yet they do because they have restricted your access to a tool that many of the ALJs in this country have used very effectively in deciding cases in the past. And so what, in fact, they are doing by limiting the MMPI is saying they are going to decide what you can look at and what you cannot.

Judge STULTS. Well, I would have to agree with Judge Garmon. It is a policy determined by the agency. We, in our qualified

decisional independence, are limited to do what the Commissioner says.

Now, I will tell you this right now: We are still getting consultative exams with the MMPI in it, and that will continue for a period of time. So at least for me personally, it is a little premature because I have not had the opportunity to have cases come before me where I do not have that as a tool.

Senator COBURN. Well, but the point is you do not have the ability now under the rules to request an MMPI on a case.

Judge STULTS. That is true.

Senator COBURN. Our judges could not answer it, but why would we limit your ability to utilize information that would help you make a better decision in a case?

In other words, somebody needs to explain to this Subcommittee why in the world we would take something that has been used for years, that is recognized scientifically to be very valid and a very good tool for large areas in health care and also judgment and say all of a sudden you cannot use it?

Judge GARMON. Yes, sir, and as I understood the answer of the prior panel, that information is coming to you, and you will get the reasoning behind it.

Senator COBURN. Were any of you shocked that you could not use that anymore? Did it cross your mind that, "Here is a tool that may help me decide a case accurately that I no longer am going to be able to utilize"?

Judge GARMON. Well, sir, I am not a doctor, so I—again, you are asking me to step into your role——

Judge ERWIN. Without speaking to policy, without speaking for the agency, I did use the information, and a number of judges have wished they could still get it.

Senator COBURN. OK.

Judge ERWIN. That is my personal opinion. I do not speak for the agency.

Senator COBURN. I understand, and I know that is not policy. I am just saying, anybody that has used it and seen it has seen the value of it. Why do we take a valuable tool and restrict its use given that we are—you have significant freedom to make policy decisions about an individual case as long as you are doing it within the parameters of guidelines that the Social Security Administration sets up. Why would we restrict your ability to utilize information to help you make that case?

All right. I will have some additional questions for the record, Mr. Chairman. I again thank you, and I thank all of you. Thank you for your service, one. You have got a tough job. Tough. Good luck.

Judge GARMON. Thank you.

Judge STULTS. Thank you.

Senator LEVIN. Dr. Coburn, I think we probably should then official ask the Social Security Administration to answer that question since this panel is not able to answer it. I think it is your suggestion—and I totally agree with it—that we find out. I do not know what an MMPI is, frankly, but I know that Dr. Coburn does, and we should know why information which has been traditionally relevant in a case is no longer apparently requestable.

Senator COBURN. Yes.

Senator LEVIN. So if that is all right with you we will official ask the Social Security Administration to give us the answer within 30 days as to why it is that they have taken that step.[1]

I want to thank Dr. Coburn, and I want to thank his staff and my staff for the work that they have done on this. It is a significant problem which has been addressed here. From my offices back in Michigan, this is not the number one problem by any means that we have with Social Security disability. The number one problem we hear about is the long wait, and that is something which I think has now been somewhat shortened, actually, but nonetheless represents a huge problem for us.

I think the second problem we hear the most about is the fear that the Social Security disability program may run out of funding—will run out of funding at the current rate in a couple of years, and what are we going to do about that? But this problem that has been identified and gone into and investigated by this Subcommittee now relates to that second question. It probably relates to the first question, for that matter.

So I want to thank Dr. Coburn for his leadership in looking at the problem. We just simply should not have 20 or 25 percent of the cases that have, according to the Social Security Administration, errors or inadequacies in them. The Social Security Administration has begun to tackle the problem. We both gave them credit for doing so. We hope our report helps that effort, and I know that is clearly the intention of the report.

With that, I will thank again Dr. Coburn, and our staffs, and thank our panel, and we will stand adjourned.

[Whereupon, at 12:45 p.m., the Subcommittee was adjourned.]

[1] See Exhibit No. 23 which appears in the Appendix on page 900.

APPENDIX

PRESS RELEASE

U. S. Senate Permanent Subcommittee on Investigations

HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE

Carl Levin, Chairman
Tom Coburn, Ranking Minority Member

Opening Statement of Senator Carl Levin
Chairman, Permanent Subcommittee on Investigations
hearing on
Social Security Disability Programs:
Improving the Quality of Benefit Award Decisions

The Social Security Disability Insurance program provides financial support to Americans who, due to a disability, are incapable of working at a full-time job. The number of individuals applying for disability insurance aid has been increasing in recent years, made worse by the 2008 financial crisis when millions of workers lost their jobs and their employer-sponsored health insurance. Without health insurance, many of those individuals couldn't afford to pay for health care. Without health care, chronic conditions held in check by medicine and treatment worsened and sometimes became disabling. Those workers then turned to federal disability insurance.

More individuals receiving disability insurance payments has, in turn, increased the stress on the Social Security Disability Trust Fund. Recent estimates predict that trust fund may be unable to pay full benefits by 2016, a problem this country has a moral obligation to address.

Another problem is how long the disability application process takes. Applicants can wait two years to get a hearing and even longer for their case to be decided. During that years-long wait, claimants often have less access to medical care or medicines. Although the Social Security Administration has recently reduced the backlog, large numbers of our most vulnerable citizens are still waiting in long lines.

While there are many concerns about Social Security disability programs, including exhaustion of the trust fund and the backlog, today's hearing focuses on another set of concerns: what happens when an individual finally gets to the front of the line and gets their case heard. At the request of Dr. Coburn, the Ranking Republican on our Subcommittee, we launched a bipartisan investigation into how decisions are made to award disability benefits. After receiving actual case files from three counties in three different states, with all personal information removed, the files were reviewed to see how they were being decided, at both the initial and appellate levels. The review examined only cases in which benefits were awarded, and not any cases in which benefits were denied.

A number of troubling problems appeared. One judge who churned out over 1,500 cases per year took inappropriate shortcuts in his opinions, cutting and pasting medical evidence from the case file into his opinions without explaining or analyzing what it meant, and writing the phrase "etc., etc., etc." rather than describing the relevant evidence. His chief judge confronted him in person and by letter, but for years he turned out the same poor quality work.

In other cases that were reviewed, judges held perfunctory hearings that lasted less than five minutes, failed to elicit any testimony from the person applying for benefits, and failed to

examine medical evidence raising questions about whether that person was entitled to disability benefits. In still other cases, poorly written opinions awarding benefits failed to identify medical evidence showing how the requirements for establishing a disability were met, did not acknowledge or address evidence that impairments were not disabling or evidence that the claimant had been working, and at times even misreported medical findings or hearing testimony.

The report's findings of a large number of poor quality decisions in the 300 case files reviewed are consistent with the Social Security Administration's own internal research. An SSA quality review process found that, in 2011, 22% or over 1 in 5 disability cases decided by an Administrative Law Judge had contained errors or were inadequately justified. Those errors went in both directions, awarding and denying benefits. Those errors and inadequacies did not mean that the 1 in 5 disability decisions were all wrongly decided; what they meant was that the opinions being produced in those cases did not contain the type of analysis needed to be confident that the cases were correctly decided and disability benefits go only to the truly disabled.

Senator Coburn is releasing a report that describes the results of the investigation into the disability decision making process. That report, in a unique way, provides detailed, relevant information about a process that is necessarily closed to the public, since disability hearings discuss an individual's personal medical records. The report not only confirms the Social Security Administration's own findings, it demonstrates what is at stake, identifies important issues illustrating how the quality of disability benefit award decisions needs to be improved, and why oversight by the SSA and Congress is so important.

The report also contains many recommendations with which I agree, including expanding the Social Security Administration's quality review process; closing the evidentiary record at a reasonable time before a hearing to ensure adequate time to review materials; updating the decades-old job list; and increasing training for the judges.

I do have a significant concern about a key recommendation to mandate a government representative at all disability hearings, because of the likelihood that it would lead to an adversarial process. The Supreme Court has said that the Social Security Act calls for the agency to operate "as an adjudicator, and not as an advocate or adversary." That is a central principle of the disability system, and if the proposed government representative is not to advocate for a particular position before the Administrative Law Judge, it would seem to be an expensive and time consuming duplication or confusion of roles.

The men and women who administer the Social Security disability programs don't have it easy. The plight of the disabled demands that they do their jobs quickly, given the backlog. The law requires them to navigate complex rules and make difficult judgments. The threat to the program's solvency hovers over everything. I hope that the Subcommittee's work will contribute to the ongoing efforts to improve the disability award process, and I look forward to the testimony of our witnesses today. First, I turn to my friend, the Ranking Republican Senator Coburn, for his opening statement, and thank him for the extensive work he and his hardworking staff put into this important effort.

HEARING BEFORE

THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

UNITED STATES SENATE

SEPTEMBER 13, 2012

STATEMENT
OF
JUDGE PATRICIA JONAS
EXECUTIVE DIRECTOR
OFFICE OF APPELLATE OPERATIONS
OFFICE OF DISABILITY ADJUDICATION AND REVIEW
SOCIAL SECURITY ADMINISTRATION

Chairman Levin, Ranking Member Coburn, and Members of the Subcommittee:

Thank you for the opportunity to appear before you today. My name is Judge Patricia Jonas. I am the Executive Director of the Office of Appellate Operations and the Deputy Chair of the Appeals Council (AC) at the Social Security Administration Office of Disability Adjudication and Review (ODAR). Since 1940, the AC has operated under a direct delegation of authority from the Commissioner of Social Security to help oversee the hearings process. The AC conducts reviews of practices and decisions based on this authority. I oversee approximately 75 administrative appeals judges of the AC who review both the allowances and denials made by our administrative law judges (ALJ).

I understand the Subcommittee is preparing to release a report concerning 300 disability cases—100 each from Buchanan County, VA, Dallas County, AL, and Oklahoma County, OK. We have not yet seen that report, but we look forward to reviewing it and working with the Subcommittee to collect meaningful data about areas of mutual concern. We recognize that the conclusions of this study will be severely limited by the statistically non-representative sample of cases that was studied. That said, we are hopeful that the report will identify data that merit further research. We are also pleased to share with you the agency's preliminary findings from its separate review of the 300 cases.

In addition to addressing the findings from your report, I want to take this opportunity to update you on the improvements we have made to the hearings and appeals process. The Supreme Court has recognized that we are "probably the largest adjudicative agency in the western world," and we take very seriously our responsibility to issue timely and accurate decisions.[1]

When Commissioner Astrue arrived five years ago, there was widespread discontent with backlogs and delays in the disability system. There was also significant concern about the quality of our decision-making. The majority of a prior agency plan to fix those problems—Disability Service Improvement (DSI)—was halted so that resources could be redirected to backlog reduction. The numbers tell the story. At the time, over 63,000 people waited over 1,000 days for a hearing, and some people waited as long as 1,400 days. We were failing the public.

Right from the beginning, Commissioner Astrue's refrain was that we could not take the easy road of short-term fixes on backlogs that would aggravate our quality issues. With that principle in mind, Commissioner Astrue developed an operational plan that focused on the gritty work of truly managing the unprecedented hearings workload. We made dozens of incremental changes, including using video more widely, improving information technology, simplifying regulations, standardizing business processes, and

[1] *Heckler v. Campbell*, 461 U.S. 458, 461 n.2 (1983).

establishing ALJ productivity expectations, to name just a few. Additional resources provided by Congress in the Recovery Act were critical to supporting these initiatives.

Today, the result is clear—the plan has worked. Average processing time, which stood at 532 days in August 2008, steadily declined for more than three years, and currently stands at 359 days.

This improvement in our ability to hold hearings and issue timely decisions is even more impressive when you consider that we have given priority to the oldest cases, which are generally the most complex and time-consuming. Since 2007, we have decided over 600,000 of the oldest cases. Each year, we lower the threshold for aged cases to ensure that we continue to eliminate the oldest cases first. We ended fiscal year (FY) 2011 with virtually no cases over 775 days old. Through the steady efforts of our employees, we now define an aged case as one that is 725 days or older, and we have already completed over 90 percent of them. Next year, our management goal is to raise the bar on ourselves again by focusing on completing all cases over 675 days old.

As we have worked to provide your constituents with quicker decisions, we have not forgotten our duty to ensure that every decision is fair and meets the requirements of the law. In short, we strive to make sure that our decisions are of the highest quality.

Prior to Commissioner Astrue's arrival, due to several years of budget shortfalls, the agency had performed very little quality review at ODAR, in large part due to litigation and congressional reaction to the "Bellmon Review" in the 1980s. And perhaps equally important, as a result of that litigation and congressional reaction, our policy guidance and feedback to our ALJs was limited. For many years, a remand order was the primary method of providing written feedback from the AC to ALJs. While this method of providing feedback and guidance to ALJs is still an appropriate mechanism when addressing individual cases, there are limitations. For example, the number of remands to any ALJ is relatively small, and, until the reintroduction of a favorable review effort at the AC, the feedback was generally limited to cases in which the ALJ made an unfavorable decision.

However, under Commissioner Astrue's leadership, we took aggressive steps to institute a more balanced quality review into the hearings process. The first step was to develop serious data collection and management information for ODAR, and the next step was to revive development of an electronic policy-compliant system for the AC, which had been terminated by the DSI initiative. These new tools permitted the AC to capture a significant amount of structured data concerning the application of agency policy in hearing decisions. In December 2008, Commissioner Astrue provided resources to our Office of Quality Performance to institute an independent national-level review of hearings level decisions to ensure a consistent and comparative review for all three adjudicative levels of the agency's disability process. Also, in 2009, Commissioner Astrue reestablished the quality review function in the AC, known as the Division of Quality (DQ), that reintroduced review of a sampling of favorable hearing decisions. This office took about a year to implement fully since we had to hire, train,

and lease office space for about 50 staff whose function is to identify quality issues in the processing of disability cases at the hearings level. Beginning in September 2010, the DQ began to conduct the reviews of favorable hearings level decisions.

These new quality initiatives have given us a new opportunity to improve our feedback and policy guidance. The data collected from these quality initiatives identify the most error-prone provisions of law and regulation and this information is used to design and implement our ALJ training efforts, including the annual judicial training and mandatory quarterly training for all ALJs. We have also recently implemented a new process that expands the opportunity for ALJs to provide feedback to the AC when a remand is issued.

We also provide feedback on decisional quality, giving adjudicators real-time access to their remand data. We develop and deliver specific training that focuses on the most error-prone issues that our judges must address in their decisions. In addition, we make available specific training to address individualized training needs.

These efforts are testing some longstanding traditions within ODAR. We are moving from training based primarily on anecdotal information as to our most significant problems to a data-based identification of issues. Training materials are developed so that they are not only a policy reminder, but a skill-based training designed to improve both the adjudicator's efficiency and accuracy in case adjudication. We are transparent with the information that we are collecting so that the ALJs can more readily make use of the information. Providing a mechanism for the ALJs to question the AC about a remand is also a new innovation. We believe that our hearings process is improving because of this increased feedback and communication.

As you are aware, there is a public dialogue about our ALJs and our hearing process. Certainly, the fact that better ALJ data are readily available is a factor. Allegations both of "paying down the backlog" and fraud in the disability system have appeared in the media from time to time. These allegations are based mostly on anecdote and innuendo, and unfairly diminish our accomplishments over the past five years. Moreover, these reports often ignore the reality that we are making quicker, higher quality disability decisions. Over the past five years, the allowance and denial rates have become more consistent throughout the ALJ corps. Since FY 2007, there has been more than a two-thirds reduction in the number of judges who allow more than 85 percent of their cases.[2]

Of course, opportunities for continued improvement remain. Due to challenges maintaining our staffing levels and difficulty keeping up with demand, we have begun to lose ground with respect to our average processing time these last two years. At this point, it appears all but certain that we will not meet our average processing time goal of 270 days in FY 2013; however, full funding of the President's budget would allow us to make progress.

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[2] See Appendix A.

300 Case Study Preliminary Findings

While my office has not yet reviewed the 300 disability cases provided the Subcommittee, which consisted of a mixture of decisions from all levels of our adjudication process and were weighted toward allowances, the agency's Office of Medical and Vocational Evaluation did a basic review of them. I understand that they found a limited number of policy issues that are consistent with what we saw when the DQ in the AC conducted a national random sample review of favorable hearings level decisions in FY 2011.

Two areas that concerned us in our AC sample results were the evaluation of medical opinion and the assessment of residual functional capacity (RFC). Using the data we collected at the AC, we provided mandatory training to all ALJs on RFC and evaluation of medical source opinion earlier this year. Just as with the cases we see at the AC, the majority of the ALJs in the cases that the Subcommittee requested appear to have complied with our policies. However, there also are examples in which ALJs were not policy compliant in evaluating the appropriate weight given to a medical source's opinion and in assessing the claimant's RFC. There were also several case examples from one ALJ in which the written decision appeared inaccurate and contained boilerplate information that was not relevant to the individual claimant. That same issue had been seen by the DQ in the random sample review and, as a result, the Chief ALJ had instructed the ALJ to discontinue this practice. This example shows that our improvements are producing positive results.

Building Speed and Quality into the Hearings and Appeals Process

When the agency established the hearings process in 1940, it designed the process to handle a substantial number of cases—that is, a larger number than was handled in other hearing processes.[3] However, over the years, that number has grown. In FY 2007, we received nearly 580,000 hearing requests; last fiscal year, we received over 859,000 hearing requests, which was a record number. The main reason behind this workload growth in recent years has been the flood of new appeals caused by the aging of the baby boomers and the economic downturn. Rapid expansion of large firms representing claimants may also be a factor in the higher rate of appeal.

To address these growing workloads, we decided to return to the gritty work of truly managing our hearings and appeals workloads.

We hired additional ALJs for the offices with the heaviest workloads and informed our entire corps of our expectation that they should issue between 500 and 700 legally sound decisions annually.[4] When we established that productivity expectation in late

[3] Basic Provisions Adopted by the Social Security Board for the Hearing and Review of Old-Age and Survivors Insurance Claims, at 4 (January 1940).

[4] In addition, we limit the limit the number of cases assigned per year to an ALJ.

2007, only 47 percent of the ALJs were achieving it. In FY 2011, 77 percent met the expectation, and we expect that percentage to rise this fiscal year.

We opened five National Hearing Centers (NHC) to further reduce hearings backlogs by increasing adjudicatory capacity and efficiency with a focus on a streamlined electronic business process. Transfer of workload from heavily backlogged hearing offices is possible with electronic files, thus allowing the NHC to easily provide assistance to these areas of the country.

In 2010 and 2011, we opened 24 new hearing offices and satellite offices. While a lack of funding forced us to cancel plans for additional offices, those we did open are making a substantial difference in communities that were experiencing the longest waits for hearings.

We increased usage of the Findings Integrated Templates that improve the legal sufficiency of hearing decisions, conserve resources, and reduce average processing time. We introduced a standard Electronic Hearing Office Process, also known as the Electronic Business Process, to promote consistency in case processing across all hearing offices. We also built the "How MI Doing" tool that gives adjudicators extensive information about the reasons their cases were subsequently remanded and allows them to view their performance in relation to the average of other ALJs in the office, region, and Nation. Currently, we are developing training modules for each of the 170 bases for remands that eventually will be linked to this tool so that ALJs can obtain training on targeted issues.

We expanded automation tools to improve speed, efficiency, quality, and accountability. We initiated the Electronic Records Express project, which provides electronic options for submitting health and school records related to disability claims. This initiative saves critical administrative resources because our employees burn fewer CDs freeing them to do other work. In addition, appointed representatives with e-Folder access have self-service access to hearing scheduling information and the current Case Processing and Management System (CPMS) claim status for their clients, reducing the need for them to contact our offices. We have registered over 9,000 representatives for direct access to the electronic folder. We also implemented Automated Noticing that allows CPMS to automatically produce appropriate notices based on stored data. We implemented centralized printing and mailing that provides high-speed, high-volume printing for all hearings and appeals offices. We implemented Electronic Signature that allows ALJs and Attorney Adjudicators to sign decisions electronically.

Additionally, we are developing another automated tool, the electronic bench book (eBB), which we believe will help ALJs review, decide, and provide instructions for decision writers in a fully electronic environment. Last month, we initiated a pilot of the eBB in three hearing offices. The eBB is a web-based tool that aids in documenting, analyzing, and adjudicating a disability case according to our regulations. Wherever possible, we reuse data to limit the need to re-enter information. eBB is designed to pull in and display information entered from various sources. eBB should make review of

the electronic file and instructions to decision writers more complete and efficient, which would reduce the number of cases remanded because of incomplete documentation.

We have Federal disability units that provide extra processing capacity throughout the country. In recent years, these units have been assisting stressed State disability determination agencies. After evaluating our limited resources, our success in holding down the initial disability claims pending level, and a further spike in hearings requests, we redirected these units in February 2012 to assist in screening hearings requests. Our Federal disability units can make fully favorable allowances, if appropriate, without the need for a hearing before an ALJ.

We also listened to criticism from Congress and others. We have tried to make the right decision upfront as quickly as possible. For instance, we are successfully using our Compassionate Allowances (CAL) and Quick Disability Determination initiatives to fast-track disability determinations at the initial claims level for over 150,000 disability claimants each year, while maintaining a very high accuracy rate. Currently, about 6 percent of initial disability claims qualify for our fast-track processes, and we expect to increase that number as we add new conditions to our CAL program. This helps keep these cases out of our appeals process altogether.

At the AC, we also made improvements that helped us to handle the influx of cases from the hearing offices and improve the quality of decisions throughout our entire hearings and appeals process. For example, we developed and are now using the Appeals Review Processing System (ARPS), an Intranet case processing system that helps staff identify errors, prepare recommendations for review, identify trends, and provide feedback to adjudicators and staff.

Over the last few years, the AC has developed an interactive training model that received the prestigious W. Edwards Deming Training Award from the Graduate School USA in 2011.

In the future, we plan to implement a new case assignment model for the AC that will group cases with similar issues and assign those cases concurrently. This change will improve consistency and help identify areas for future training, while also decreasing processing times for all claimants.

However, of all the important improvements we have made or plan to make at the AC, none is more important than the recent creation of the DQ. In 2008, we presented Commissioner Astrue with a plan that would allow us to gather comprehensive data on the quality of our hearing decisions. Recognizing an obvious need, Commissioner Astrue established a workgroup in 2009, which led to the establishment of DQ in September 2010.

Even in the beginning, when the data were just trickling in, we began to identify decision-making issues that we knew needed to be addressed through rulemaking or sub-regulatory action.

Currently, DQ reviews a statistically valid sample of un-appealed favorable ALJ hearing decisions before those decisions are effectuated (i.e., finalized), as authorized by 20 CFR 404.969 and 416.1469. In FY 2011, DQ reviewed 3,692 partially and fully favorable decisions issued by ALJs and attorney adjudicators, and took action on about 22 percent, or 812, of those cases.[5]

While longstanding regulations do not permit our DQ to do pre-effectuation reviews that are based on a specific ALJ or hearing office, the DQ is able to conduct post-effectuation focused reviews on specific hearing offices, ALJs, representatives, doctors, and disability program issues, etc.[6] These reviews allow us to better understand how our complex disability policies are being implemented by various parties throughout the hearings level. We identify potential subjects for focused reviews from a variety of sources, including data collected through our systems, findings from pre-effectuation reviews, and internal and external referrals received from various sources regarding potential non-compliance with our regulations and policies. One way we use these reviews is to identify common errors in ALJ decisions. The results of these reviews show common errors to be failure to adequately develop the record, lack of supporting rationale, and improper evaluation of opinion evidence. We have used this information to develop and implement mandatory training for our ALJs. Furthermore, we use the comprehensive data and analysis provided by DQ to provide feedback to other components on policy guidance and litigation issues.

Moreover, since we are handling more cases in both our hearing offices and at the AC, the number of new Federal court cases filed challenging our final decisions has gone up. In FY 2007, dissatisfied claimants filed 11,920 new cases. That number rose to 15,644 in FY 2011, and we project that there will be about 19,100 new cases filed in FY 2013. Our success in the courts has also improved. In FY 2011, courts affirmed our decisions in 51 percent of the cases decided, up from 49 percent in FY 2007, and court reversals have decreased from 5 percent to fewer than 3 percent of cases over this time.

Finally, notwithstanding our impressive work to-date, we have sought outside advice from the Administrative Conference of the United States (ACUS) to guide our future quality improvement efforts in our hearing offices and at the AC. Currently, ACUS is studying:

- The effect of the treating physician rule on the role of the courts in reviewing our disability decisions and the measures that we could take to reduce the number of remanded cases;

[5] In those instances, the AC either remanded the case to the hearing office for further development or issued a decision that modified the hearing decision.

[6] Since these focused reviews are post-effectuation reviews, they do not change case outcomes.

- The AC's role in reviewing cases to reduce any observed variances and the efficacy of expanding the AC's existing authority to conduct more focused reviews of judge decisions; and

- How the AC can select cases for review—as well as when the AC should select cases for review (i.e., pre- or post-effectuation)—and what should be the scope and manner of review.

We expect ACUS to deliver its preliminary findings by the end of this calendar year and a draft final report with recommendations early next year.

Additionally, we have also asked ACUS to review and analyze the *Social Security Act* and our regulations regarding the duty of candor and the submission of all evidence in disability claims. ACUS will also survey the requirements of other administrative tribunals, as well as the Federal Rules of Evidence, Federal Rules of Civil Procedure, and other applicable authority, regarding the duty of candor and submission of all evidence and then make recommendations for improvements in the Social Security adjudication process.

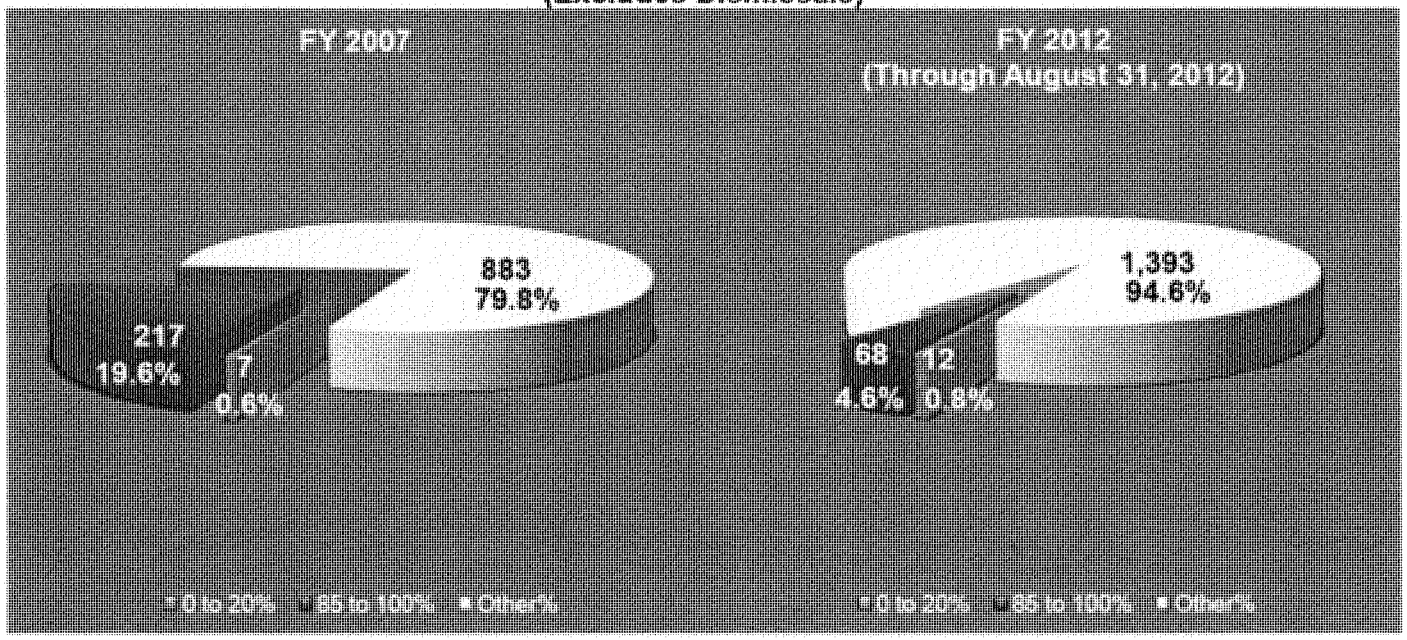
Conclusion

Contrary to popular anecdote and innuendo, we have made extraordinary gains improving the speed and quality of our hearings and appeals process over the past five years. We have done so against extraordinary obstacles, including demographic challenges, the economic downturn, and fiscal belt tightening. Resources permitting, we believe that we can continue to improve by building upon our productivity gains and the body of quality review data that we have accumulated.

Finally, I look forward to reviewing the Subcommittee's report concerning 300 disability cases. Without having seen the report, I will do my best to answer any questions you may have today. Although the report will be severely limited by the statistically non-representative sample of cases that was studied, we are nonetheless hopeful that the report will identify possible trends that merit further research.

Appendix A

Number and Percentage of ALJs with 100+ Dispositions in Allowance Rate Groups
(Excludes Dismissals)



Source: CPMS MI and DART Tables (DITI)
Prepared by ODAR OESSI/DMIA, September 4, 2012

HEARING BEFORE

THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

UNITED STATES SENATE

SEPTEMBER 13, 2012

STATEMENT
OF
JUDGE DEBRA BICE
CHIEF ADMINISTRATIVE LAW JUDGE
OFFICE OF DISABILITY ADJUDICATION AND REVIEW
SOCIAL SECURITY ADMINISTRATION

Chairman Levin, Ranking Member Coburn, and Members of the Subcommittee:

Thank you for the opportunity to appear before you today. My name is Judge Debra Bice, and I am the Chief Administrative Law Judge at the Social Security Administration. I am responsible for overseeing approximately 1,500 administrative law judges (ALJ) in the Office of Disability Adjudication and Review (ODAR). My testimony will focus on the process through which we determine disability at all adjudicative levels across the agency. My testimony will also address the challenges we face hiring, managing, and disciplining our judge corps.

How We Determine Disability—The Sequential Evaluation Process

Our general process for determining disability is admittedly complicated, but it is necessarily complex to meet the requirements of the law as designed by Congress.[1]

We evaluate adult claimants for disability under a standardized five-step evaluation process (sequential evaluation), which we formally incorporated into our regulations in 1978. At step one, we determine whether the claimant is engaging in substantial gainful activity (SGA). SGA is significant work normally done for pay or profit. The *Social Security Act* (Act) establishes the SGA earnings level for blind persons and requires us to establish the SGA level for other disabled persons.[2] If the claimant is engaging in SGA, we deny the claim without considering medical factors.

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[1] Section 223(d) of the Act defines "disability" as "the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or in the case of an individual who has attained the age of 55 and is blind (within the meaning of 'blindness' as defined in section 216(i)(1)), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time. An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), 'work which exists in the national economy' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country. In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Commissioner of Social Security shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Commissioner of Social Security does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process. An individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled. For purposes of this subsection, a 'physical or mental impairment' is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

[2] For blind persons, the SGA earnings limit is currently $1,690 a month. Currently, other disabled persons are engaging in SGA if they earn more than $1,010 a month. Both SGA amounts are indexed annually to average wage

If a claimant is not engaging in SGA, at step two, we assess the existence, severity, and duration of the claimant's impairment (or combination of impairments). The Act requires us to consider the combined effect of all of a person's impairments, regardless of whether any one impairment is severe. Throughout the sequential evaluation, we consider all of the claimant's physical and mental impairments singly and in combination.

If we determine that the claimant does not have a medically determinable impairment, or that the impairment or combined impairments are "not severe" because they do not significantly limit the claimant's ability to perform basic work activities, we deny the claim at the second step. If the impairment is "severe," we proceed to the third step.

Listing of Impairments

At the third step, we determine whether the impairment "meets" or "equals" the criteria of one of the Listing of Impairments (Listings) in our regulations.

The Listings describe for each major body system the impairments considered so severe that we can presume that they would prevent an adult from working. The Act does not require the Listings, but we have been using them in one form or another since 1955. The listed impairments are permanent, expected to result in death, or last for a specific period greater than 12 months.

Using the rulemaking process, we revise the Listings' criteria on an ongoing basis. The Listings are a critical factor in our disability determination process, and we are committed to updating each listing at least every five years. In the last five years, we have revised five of 14 body systems in the Listings, and in FY 2013 we plan to revise two more body systems and obtain public comments on the remaining seven body systems. When updating a listing, we consider current medical literature, information from medical experts, disability adjudicator feedback, and research by organizations such as the Institute of Medicine. As we update entire body systems, we also make targeted changes to specific rules as necessary.

If the claimant has an impairment that meets or equals the criteria in the Listings, we allow the disability claim without considering the claimant's age, education, or past work experience.

As part of our process at step three, we developed an important initiative—our Compassionate Allowances (CAL) initiative—that allows us to identify claimants who are clearly disabled because the nature of their disease or condition clearly meets the statutory standard for disability. With the help of sophisticated new information

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growth, using the National Average Wage Index. However, the Act specifies that we cannot necessarily count all the person's earnings. For example, we deduct impairment-related work expenses when we consider whether a person is engaging in SGA.

technology, we can quickly identify potential Compassionate Allowances and then swiftly make decisions. We currently recognize 165 CAL conditions, and we expect to expand the list later this year. We continue to review our CAL policy to ensure we base it on the most up-to-date medical science.

Residual Functional Capacity

A claimant who does not meet or equal a listing may still be disabled. The Act requires us to consider how a claimant's condition affects his or her ability to perform past relevant work or, considering his or her age, education, and work experience, other work that exists in the national economy. Consequently, we assess what the claimant can still do despite physical and mental impairments—i.e., we assess his or her residual functional capacity (RFC). We use that RFC assessment in the last two steps of the sequential evaluation.

We developed a regulatory framework to assess RFC. An RFC assessment must reflect a claimant's ability to perform work activity on a regular and continuing basis (i.e., eight hours a day for five days a week, or an equivalent work schedule). We assess the claimant's RFC based on all of the evidence in the record, such as treatment history, objective medical evidence, and activities of daily living.

We must also consider the credibility of a claimant's subjective complaints, such as pain. Such complaints are inherently difficult to assess. Under our regulations, disability adjudicators use a two-step process to evaluate credibility. First, the adjudicator must determine whether medical signs and laboratory findings show that the claimant has a medically determinable impairment that could reasonably be expected to produce the pain or other symptoms alleged. If the claimant has such an impairment, the adjudicator must then consider all of the medical and non-medical evidence to determine the credibility of the claimant's statements about the intensity, persistence, and limiting effects of symptoms. The adjudicator cannot disregard the claimant's statements about his or her symptoms simply because the objective medical evidence alone does not fully support them.

The courts have influenced our rules about assessing a claimant's disability. For example, when we assess the severity of a claimant's medical condition, we historically have given greater weight to the opinion of the physician or psychologist who treated that claimant. While the courts generally agreed that adjudicators should give special weight to treating source opinions, the courts formulated different rules about how adjudicators should evaluate treating source opinions. In 1991, we issued regulations that explain how we evaluate treating source opinions.[3] However, the courts have continued to interpret opinions from treating physicians in conflicting ways.

[3] Under those regulations, we will give controlling weight to a treating physician's opinion if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the record. In that case, a disability adjudicator must adopt a treating source's medical opinion regardless of any finding he or she would have made in the absence of the medical opinion.

Once we assess the claimant's RFC, we move to the fourth step of the sequential evaluation.

Medical-Vocational Decisions (Steps Four and Five)

At step four, we consider whether the claimant's RFC prevents the claimant from performing any past relevant work. If the claimant can perform his or her past relevant work, we deny the disability claim.

If the claimant cannot perform past relevant work (or if the claimant did not have any past relevant work), we move to the fifth step of the sequential evaluation. At step five, we determine whether the claimant, given his or her RFC, age, education, and work experience, can do other work that exists in the national economy. If a claimant cannot perform other work, we will find that the claimant is disabled.

We use detailed vocational rules to minimize subjectivity and promote national consistency in determining whether a claimant can perform other work that exists in the national economy. When we issued these rules in 1978, we noted that the Committee on Ways and Means, in its report accompanying the *Social Security Amendments of 1967*, said that:

> It is, and has been, the intent of the statute to provide a definition of disability which can be applied with uniformity and consistency throughout the nation, without regard to where a particular individual may reside, to local hiring practices or employer preferences, or to the state of the local or national economy.[4]

The medical-vocational rules, set out in a series of "grids," relate age, education, and past work experience to the claimant's RFC to perform work-related physical activities. Depending on those factors, the grid may direct us to allow or deny a disability claim. For cases that do not fall squarely within a vocational rule, we use the rules as a framework for decision-making. In addition, an adjudicator may rely on a vocational expert to identify other work that a claimant could perform.

How We Determine Disability—The Administrative Process

The Supreme Court has accurately described our administrative process as "unusually protective" of the claimant.[5] Indeed, we strive to ensure that we make the correct decision as early in the process as possible, so that a person who truly needs disability benefits receives them in a timely manner. In most cases, we decide claims for benefits using an administrative review process that consists of four levels: (1) initial

[4] 43 Fed. Reg. 55349, 55350 (1978) (quoting H.R. Rep. No. 544, 90th Congress, 1st Sess., at 30 (1967)).

[5] *Heckler v. Day*, 467 U.S. 104 (1984).

determination; (2) reconsideration determination; (3) hearing; and (4) appeals.[6] At each level, the decision-maker bases his or her decisions on provisions in the Social Security Act (Act) and regulations, as outlined above.

Initial and Reconsideration Determinations

In most States, a team consisting of a State disability examiner and a State agency medical or psychological consultant makes an initial determination at the first level. The Act requires this initial determination.[7] A claimant who is dissatisfied with the initial determination may request reconsideration, which is performed by another State agency team. In turn, a claimant who is dissatisfied with the reconsidered determination may request a hearing.[8]

Hearing Level

We have over 70 years of experience in administering the hearings and appeals process. Since the passage of the *Social Security Amendments of 1939*, the Act has required us to hold hearings to determine the rights of individuals to old-age and survivors' insurance benefits.

Over the years, the numbers of ALJs and hearing offices rapidly grew as the Social Security program grew. Recently, we added staff to help us meet growing demand and allow us to focus our resources on those parts of the country with the greatest need for hearings. In addition, we have expanded the use of video hearings, opened five National Hearing Centers to deal only with backlogged cases by video, and realigned the service areas of some of our offices. However, the attributes of the hearings and appeals process have remained essentially the same since 1940. When it established the hearings and appeals process in 1940, the Social Security Board sought to balance the need for accuracy and fairness to the claimant with the need to handle a large volume of claims in an expeditious manner.[9] Those twin goals still motivate us. As the

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[6] 20 C.F.R. §§ 404.900, 416.1400. My testimony focuses on disability determinations, but the review process generally applies to any appealable issue under the Social Security programs.

[7] Sections 205(b) and 1631(c)(1)(A) of the Act, 42 U.S.C. §§ 405(b), 1383(c)(1)(A).

[8] For disability claims, 10 States participate in a "prototype" test under 20 C.F.R. §§ 404.906, 416.1406. In these States, we eliminated the reconsideration step of the administrative review process. Claimants who are dissatisfied with the initial determinations on their disability cases may request a hearing before an ALJ. The 10 States participating in the prototype test are Alabama, Alaska, California (Los Angeles North and West Branches), Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania.

[9] Basic Provisions Adopted by the Social Security Board for the Hearing and Review of Old-Age and Survivors Insurance Claims, at 4-5 (January 1940).

Supreme Court has observed, the Social Security hearings system "must be fair—and it must work."[10]

When a hearing office receives a request for hearing from a claimant, the case file is prepared by hearing office staff prior to the case being assigned to a judge and scheduled for hearing. The ALJ decides the case *de novo,* meaning that he or she is not bound by the determinations made at prior levels of the disability process. The ALJ reviews any new medical or other evidence that was not available to prior adjudicators. The ALJ will also consider a claimant's testimony and the testimony of medical and vocational experts called for the hearing. Since the ALJ considers additional evidence and testimony, his or her decision to allow an appeal does not necessarily mean that the earlier decision was incorrect based on the evidence available at the time. If a review of all of the evidence supports a decision fully favorable to the claimant without holding a hearing, the ALJ or attorney adjudicator may issue an on-the-record fully favorable decision.[11]

In contrast to Federal court proceedings, our ALJ hearings are non-adversarial. Formal rules of evidence do not apply, and the agency is not represented except by the ALJ, who has dual responsibilities.[12] At the hearing, the ALJ takes testimony under oath or affirmation. The claimant may elect to appear in-person at the hearing or consent to appear via video. The claimant may appoint a representative (either an attorney or non-attorney) who may submit evidence and arguments on the claimant's behalf, make statements about facts and law, and call witnesses to testify. The ALJ may call vocational and medical experts to offer opinion evidence, and the claimant or the claimant's representative may question these witnesses.

If, following the hearing, the ALJ believes that additional evidence is necessary, the ALJ may leave the record open and conduct additional post-hearing development; for example, the ALJ may order a consultative exam. Once the record is complete, the ALJ considers all of the evidence in the record and makes a decision. The ALJ decides the case based on a preponderance of the evidence in the administrative record. A

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[10] *Richardson v. Perales*, 402 U.S. 389, 399 (1971).

[11] Under the Attorney Adjudicator program, our most experienced attorneys spend a portion of their time making on-the-record, disability decisions in cases where enough evidence exists to issue a fully favorable decision without waiting for a hearing. 20 C.F.R. §§ 404.942, 416.1442.

[12] Starting in the 1970s under Commissioner Ross, we tried to pilot an agency representative position at select hearing offices. However, a United States District Court held that the pilot violated the Act, intruded on ALJ independence, was contrary to congressional intent that the process be "fundamentally fair," and failed the constitutional requirements of due process. *Salling v. Bowen*, 641 F. Supp. 1046 (W.D. Va. 1986). We subsequently discontinued the pilot due to the testing interruptions caused by the *Salling* injunction, general fiscal constraints, and intense congressional opposition. Congress originally supported the project; however, we experienced significant congressional opposition once the pilot began. For example, Members of Congress introduced legislation to prohibit the adversarial involvement of any government representative in Social Security hearings, and 12 Members of Congress joined an *amicus* brief in the *Salling* case opposing the project.

claimant who is dissatisfied with the ALJ's decision generally has 60 days after he or she receives the decision to ask the Appeals Council (AC) to review the decision.[13]

Appeals Council

Upon receiving a request for review, the AC evaluates the ALJ's decision, all of the evidence of record, including any new and material evidence that relates to the period on or before the date of the ALJ's decision, and any arguments the claimant or his or her representative submits. The AC may grant review of the ALJ's decision, or it may deny or dismiss a claimant's request for review. The AC will grant review in a case if there appears to be an abuse of discretion by the ALJ; there is an error of law; the actions, findings, or conclusions of the ALJ are not supported by substantial evidence; or if there is a broad policy or procedural issue that may affect the general public interest.

If the AC grants a request for review, it may uphold part of the ALJ's decision, reverse all or part of the ALJ's decision, issue its own decision, remand the case to an ALJ, or dismiss the original hearing request. When it reviews a case, the AC considers all the evidence in the ALJ hearing record (as well as any new and material evidence), and when it issues its own decision, it bases the decision on a preponderance of the evidence.

If the claimant completes our administrative review process and is dissatisfied with our final decision, he or she may seek review of that final decision by filing a complaint in Federal District Court. However, if the AC dismisses a claimant's request for review, he

[13] The Appeals Council is headquartered in Falls Church, Virginia. It is our last administrative decisional level. Created on March 1, 1940 as a three-member body, the Appeals Council was established to oversee the hearings and appeals process, promote national consistency in hearing decisions made by referees (now ALJs) and ensure that the Social Security Board's (now the Commissioner's) records were adequate for judicial review. The Appeals Council has grown over time due to the growth in the increasingly complex programs it reviews and the increased number of requests for review that it receives. Currently, the Appeals Council is made up of approximately 75 Administrative Appeals Judges, 56 Appeals Officers, and several hundred support personnel. The Appeals Council is physically located in Falls Church, Virginia with additional offices in Crystal City, Virginia, and in Baltimore, Maryland. Cases originate in hearing offices throughout the country. The Appeals Council looks at each case in which a request for review is filed (over 173,000 in FY 2011). The Appeals Council may grant, deny, or dismiss a request for review. If the Appeals Council grants the request for review, it will either decide the case or return ("remand") it to an ALJ for a new decision. The Council also performs quality review, policy interpretations, and court-related functions. The Appeals Council is the core component of the Office of Appellate Operations, one of the parts of our Office of Disability Adjudication and Review. The Office of Appellate Operations provides professional and clerical support for the Appeals Council, and also maintains and controls files in cases decided adversely to claimants by ALJs and the Appeals Council, in case a further administrative or court appeal is filed. When a claimant brings a civil action against the Commissioner seeking judicial review of the agency's final decision, staff in the Office of Appellate Operations prepare the record of the claim for filing with the Court. This includes all the documents and evidence the agency relied upon in making the decision or determination.

or she cannot appeal that dismissal; instead, the ALJ's decision becomes the final decision.

Federal Level

If the AC makes a decision, it is our final decision. If the AC denies the claimant's request for review of the ALJ's decision, the ALJ's decision becomes our final decision. A claimant who wishes to appeal our final decision has 60 days after receipt of notice of the AC's action to file a complaint in Federal District Court.

In contrast to the ALJ hearing, Federal courts employ an adversarial process. In District Court, an attorney usually represents the claimant and attorneys from the United States Attorney's office or our Office of the General Counsel represent the Government. When we file our answer to that complaint, we also file with the court a certified copy of the administrative record developed during our adjudication of the claim for benefits.

The Federal District Court considers two broad inquiries when reviewing one of our decisions: whether we correctly followed the Act and our regulations, and whether our decision is supported by substantial evidence of record. On the first inquiry—whether we have applied the law correctly—the court typically will consider issues such as whether the ALJ correctly evaluated the claimant's testimony or the treating physician's opinion, and whether the ALJ followed the correct procedures.

On the second inquiry, the court will consider whether the factual evidence developed during the administrative proceedings supports our decision. The court does not review our findings of fact *de novo*, but rather, considers whether those findings are supported by substantial evidence. The Act prescribes the "substantial evidence" standard, which provides that, on judicial review of our decisions, our findings "as to any fact, if supported by substantial evidence, shall be conclusive." The Supreme Court has defined substantial evidence as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[14] The reviewing court will consider evidence that supports the ALJ's findings as well as evidence that detracts from the ALJ's decision. However, if the court finds there is conflicting evidence that could allow reasonable minds to differ as to the claimant's disability, and the ALJ's findings are reasonable interpretations of the evidence, the court must affirm the ALJ's findings of fact. In practice, courts in many parts of the country do not apply the substantial evidence standard as Congress intended, which results in many inappropriate remands.

If, after reviewing the record as a whole, the court concludes that substantial evidence supports the ALJ's findings of fact and the ALJ applied the correct legal standards, the court will affirm our final decision. If the court finds either that we failed to follow the correct legal standards or that our findings of fact are not supported by substantial evidence, the court typically remands the case to us for further administrative

[14] *Consolidated Edison Co. of New York v. N.L.R.B.*, 305 U.S. 197 (1938).

proceedings, or in rare instances, reverses our final decision and finds the claimant eligible for benefits.

ALJ Hiring, Management Oversight, and Disciplinary Processes

In order to issue timely, fair, and quality decisions in our hearings and appeals process, we must have the appropriate tools to hire, manage, and discipline our judge corps without infringing on their qualified decisional independence.

Hiring Process

On Commissioner Astrue's watch, we have raised the standards for ALJ selection, hiring people who we believe will take seriously their responsibility to the American public. We have hired 794 judges since 2007. Insistence on the highest possible standards in judicial conduct is a prudent investment for taxpayers, especially since ALJs may be removed only for good cause established and determined by the Merit Systems Protection Board.

We originally planned to hire 125 ALJs in September of FY 2012; however, we ultimately decided to hire 46 judges who will report on September 23, 2012.

We depend on OPM to provide us with a register of qualified ALJ candidates. During the *Azdell* litigation, which began in the late 1990s, use of the register was temporarily frozen due to an MSPB decision that was subsequently overturned by the United States Court of Appeals in 2003 (at which time OPM was able to reopen the then-existing register to agency requests for certificates). Since 2003, however, OPM not only re-opened the then-existing register, but also established a new examination, administered it three times, generally, beginning in 2007, and established (and subsequently supplemented) a new register. For our hearing process to operate efficiently, we need ALJs who can treat people with dignity and respect, be proficient at working electronically, handle a high-volume workload without sacrificing quality, and make swift and sound decisions in a non-adversarial adjudication setting.

OPM should continue to engage the agencies who hire ALJs and some authoritative outside groups, such as the Administrative Conference of the United States and the American Bar Association, to incorporate their expertise in the ALJ examination process. I would like to point out that the total number of Federal ALJs is 1,726 as of March 2012, and our corps represents about 86 percent of the Federal ALJ corps—we have the greatest stake in ensuring that the criteria and hiring process meet our needs, but recognize that OPM is required to produce an examination that meets the needs of the Government – and the public it serves – as a whole, pursuant to congressional directives.

Management Oversight and Disciplinary Processes

Under Commissioner Astrue's leadership, we have not hesitated to hold ALJs accountable where the law permits. Although the *Administrative Procedure Act* (APA) does not expressly state that ALJs must comply with the statute, regulations, or sub-regulatory policies and interpretations of law and policy articulated by their employing agencies, both the courts[15] and the Department of Justice's Office of Legal Counsel[16] have opined that ALJs are subject to the agency on matters of law and policy.

One of Congress' goals in passing the APA was to protect the due process rights of the public by ensuring that impartial adjudicators conduct agency hearings. Employing agencies are limited in their authority over ALJs, and Federal law precludes management from using many of the basic tools applicable to the vast majority of Federal employees. Specifically, OPM sets ALJs' salaries independent of agency recommendations or ratings. ALJs are exempt from performance appraisals, and they cannot receive monetary awards or periodic step increases based on performance. In addition, our authority to discipline ALJs is restricted by statute. We may take certain measures, such as counseling or issuing a reprimand, to address ALJ underperformance or misconduct. However, we cannot take stronger measures against an ALJ, such as removal or suspension, reduction in grade or pay, or furlough for 30 days or less, unless the Merit Systems Protection Board (MSPB) finds that good cause exists.[17]

We have taken affirmative steps to address egregiously underperforming ALJs. With the promulgation of our "time and place" regulation, we have eliminated arguable ambiguities regarding our authority to manage scheduling, and we have taken steps to ensure that judges are deciding neither too few nor too many cases. By management instruction, we have limited assignment of new cases to no more than 1,200 cases annually.

Our Hearing Office Chief Administrative Law Judges (HOCALJ) and Hearing Office Directors work together to identify workflow issues. If they identify an issue with respect to an ALJ, the HOCALJ discusses that issue with the judge to determine whether there are any impediments to moving the cases along in a timely fashion and advise the judge

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[15] "An ALJ is a creature of statute and, as such, is subordinate to the Secretary in matters of policy and interpretation of law." *Nash v. Bowen*, 869 F.2d 675, 680 (2d Cir.) (citing Mullen, 800 F.2d at 540-41 n. S and *Association of Administrative Law Judges v. Heckler*, 594 F. Supp. 1132, 1141 (D.D.C. 1984)), cert. denied, 493 U.S. 812 (1989).

[16] "Administrative law judges have no constitutionally based judicial power. . . . As such, ALJs are bound by all policy directives and rules promulgated by their agency, including the agency's interpretations of those policies and rules. . . . ALJs thus do not exercise the broadly independent authority of an Article III judge, but rather operate as subordinate executive branch officials who perform quasi-judicial functions within their agencies. In that capacity, they owe the same allegiance to the Secretary's policies and regulations as any other Department employee." Authority of Education Department Administrative Law Judges in Conducting Hearings, 14 Op. Off. Legal Counsel 1, 2 (1990).

[17] The MSPB makes this finding based on a record established after the ALJ has an opportunity for a hearing.

of steps needed to address the issue. If necessary, the Regional Chief ALJ and the Office of the Chief ALJ provide support and guidance.[18]

Generally, this process works. The vast majority of issues are resolved informally by hearing office management. When they are not, management has the authority to order an ALJ to take a certain action or explain his or her actions. ALJs rarely fail to comply with these orders. In those rare cases where the ALJ does not comply, we pursue disciplinary action. Our overarching goal is to provide quality service to those in need and instill that goal in all of our employees, including ALJs.

The current system limits how we address the tiny fraction of ALJs who hear only a handful of cases or engage in misconduct. A few years ago, we had an ALJ in Georgia who failed to inform us, as required, that he was also working full-time for the Department of Defense. Another ALJ was arrested for committing a serious domestic assault. We were able to remove these ALJs, but only after completing the lengthy MSPB disciplinary process that lasts several years and can consume over a million dollars of taxpayer resources.[19] In each of these cases, unlike disciplinary action against all other civil servants, the ALJs received their full salary and benefits until the case was finally decided by the full MSPB—even though they were not deciding cases. We are open to exploring options to address these issues, while ensuring the qualified decisional independence of these judges.

Conclusion

Our highly-trained disability adjudicators follow a complex process for determining disability according to the requirements of the law as designed by Congress. I look forward to reviewing the Subcommittee's report concerning 300 disability cases. Without having seen the report, I will do my best to answer any questions you may have today. Although the report will be severely limited by the statistically non-representative sample of cases that was studied, I am nonetheless hopeful that the report will identify data that merit further research.

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[18] Our managerial ALJs play a key role in ALJ performance. They provide guidance, counseling, and encouragement to our line ALJs. However, the current pay structure does not properly compensate them. For example, due to pay compression, a line ALJ in a Pennsylvania hearing office can earn as much as our Chief Administrative Law Judge. Furthermore, our leave rules limit the amount of annual leave an ALJ can carry over from one year to the next. These compensation rules discourage otherwise qualified ALJs from pursuing management positions, and the APA prevents us from changing those rules.

[19] Since 2007, we have filed removal charges with the MSPB against nine ALJs. The MSPB upheld our removal charges against five ALJs; three ALJs left the agency or retired in lieu of removal. One removal action is currently awaiting a decision from the MSPB. Additionally, from 2007 to present, we either sought to file or filed charges seeking suspension against 29 ALJs. Of these ALJs, 22 were suspended, six either retired or separated from the agency; and one case is currently before the MSPB.

HEARING BEFORE

THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

UNITED STATES SENATE

SEPTEMBER 13, 2012

STATEMENT
OF
JUDGE DOUGLAS STULTS
HEARING OFFICE CHIEF ADMINISTRATIVE LAW JUDGE
OKLAHOMA CITY, OKLAHOMA HEARING OFFICE
OFFICE OF DISABILITY ADJUDICATION AND REVIEW
SOCIAL SECURITY ADMINISTRATION

Mr. Chairman, Ranking Member Coburn, Members of the Subcommittee:

My name is Douglas Stults, and I serve as the Hearing Office Chief Administrative Law Judge (HOCALJ) for the ODAR Oklahoma City, Oklahoma Hearing Office (HO). I have four years and five months of experience as an ALJ and three years and nine months experience as a HOCALJ. Prior to becoming an administrative law judge (ALJ), I worked for ODAR in the Oklahoma City HO for 12 years, 3 years as the Hearing Office Director (HOD), 5 years as a Group Supervisor, and 4 years as an Attorney-Advisor. Prior to working for ODAR, I was a staff attorney for the UAW Legal Services Plan in Oklahoma City for 7½ years and had practiced law in central Oklahoma for 8½ years before that.

The Oklahoma City HO primarily serves central and western Oklahoma, specifically Oklahoma City, Lawton, Ardmore, and Clinton, Oklahoma, as well as Wichita Falls, Texas and Santa Fe, New Mexico. Thus, the claimants served by the Oklahoma City HO live in urban, suburban, and rural areas and are of diverse cultural and economic backgrounds.

The Oklahoma City HO is presently staffed with 13 ALJs, supported by 59 staff, specifically: 1 Hearing Office Director; 4 Group Supervisors; 1 Administrative Assistant; 2 Hearing Office Systems Administrators; 12 Senior Attorneys; 3 Attorney-Advisors; 6 Paralegal-Analysts; 3 Lead Case Technicians; 13 Senior Case Technicians; 6 Case Technicians; 4 Case Intake Assistants; and 2 Contact Representatives. Fifty-seven percent of our employees (41 of 72) have 6 or more years of ODAR experience and 39% (28 of 72) have 16 or more years, myself included.

In fiscal year (FY) 2011, the Oklahoma City HO attained our regionally-set dispositional goal, with 7,216 claimants served. We also completed all of our aged cases (750 days old). Thus far in FY 2012, we have served 6,317 claimants. Through the end of July 2012, Oklahoma City ALJs' dispositions have averaged: 37.8 percent fully favorable; 3.2 percent partially favorable; 41.7 percent unfavorable; and 17.2 percent dismissals. Further, through the end of August 2012, the Oklahoma City HO has:

Average Processing Time of 381 days;

Average Cases Pending per ALJ of 591;

Average Age of Pending Cases of 258 days;

Cases under 365 days old of 76%;

Receipts per day per ALJ of 2.31;

Hearing Scheduled per day per ALJ of 2.39;

Hearings Held per ALJ per day of 1.79;

Held to Scheduled Ratio of 75%;

Dispositions per day per ALJ of 2.15; and

Dispositions to Receipt Ratio of 103%.

As the HOCALJ, I strive to ensure that my hearing office handles hearing requests in an orderly manner. I discuss ALJ workload and case assignment regularly with our HOD, who oversees the direction of our staff involved in preparing cases for hearing. Generally, cases are "worked-up" for hearing in hearing request date order, with the oldest cases prepared first. Our HOD randomly assigns a minimum number of cases to each Oklahoma City ALJ; 40 cases per month so far in FY 2012.

I use our agency's technology to manage performance, quality, and productivity, mainly with the help of the Case Processing Management System (CPMS) and Disability Adjudication Reporting Tools (DART), including the "How MI Doing" and ODAR Management Information Dashboard (ODAR MIND). Top priorities include the handling of our oldest cases, the number of hearings scheduled and held per ALJ, the pending per ALJ, and the monthly dispositional totals. I pass general information concerning these categories onto all ALJs, and pass specific information on to individual ALJs as necessary.

I endeavor to work closely with our Oklahoma City ALJs. I have an unconditional "open door" policy. I speak with all of our ALJs, both formally and informally, concerning questions, problems, or suggestions that they might have, regarding individual cases as well as office policies and procedures. I regularly send e-mails to clarify issues and procedures for our ALJs and share general information.

Let me emphasize that while I can take actions to ensure that ALJs move their caseloads and apply the law and our policies correctly, the Administrative Procedure Act grants all ALJs "qualified decisional independence." "Qualified decisional independence" means that ALJs must be impartial in conducting hearings. They must decide cases based on the facts in each case and in accordance with the agency's policy, as set out in the regulations, rulings, and other policy statements. It also means, however, that ALJs make their decisions free from agency pressure or pressure by a party to decide a particular case, or a particular percentage of cases, in a particular way. If I see a performance or quality issue with an ALJ that I need to address, I will discuss the issue with the judge as soon as possible to ensure that the ALJ's actions are consistent with the agency's policy, and that the ALJ is performing at an acceptable level of productivity. While I exercise appropriate management oversight over the ALJs in my office and can take a number of actions to help ALJs improve their performance, I cannot and do not interfere with or influence the ultimate decision in any case.

In addition to my managerial duties, I hold hearings for disability cases.

Thank you for the opportunity to be here today. I would be happy to answer any questions that you may have.

HEARING BEFORE

THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

UNITED STATES SENATE

SEPTEMBER 13, 2012

STATEMENT
OF
JUDGE THOMAS ERWIN
HEARING OFFICE CHIEF ADMINISTRATIVE LAW JUDGE
ROANOKE, VIRGINIA HEARING OFFICE
OFFICE OF DISABILITY ADJUDICATION AND REVIEW
SOCIAL SECURITY ADMINISTRATION

Mr. Chairman, Ranking Member Coburn, Members of the Subcommittee:

My name is Thomas Erwin, and I serve as the Chief Administrative Law Judge (ALJ) for the Roanoke, Virginia hearing office (HO). I have a little more than 3 years of experience as an ALJ and 1 ½ years as a hearing office chief ALJ (HOCALJ). Prior to becoming an ALJ, I was an attorney advisor in the Roanoke, Virginia Office of Disability Adjudication and Review (ODAR) office for three years. Before joining the Social Security Administration, I served as a U. S. Navy JAG attorney on active duty for five years in San Diego and Port Hueneme, California, and was appointed as the Officer in Charge of the Naval Legal Service Office Branch Office in Port Hueneme. One of my duties in the Navy was to serve as criminal defense counsel in courts-martial cases; so yes, Tom Cruise did play me in the movie A Few Good Men. I then worked in private practice in Southern California as a certified specialist in family law prior to joining the Social Security Administration in 2006.

The Roanoke, Virginia HO serves a broad area of Southwest Virginia and Southeast West Virginia. This service area is a part of a cultural region commonly known as Appalachia. The region's economy, once highly dependent on mining, forestry, agriculture, chemical industries, and heavy industry, has become more diversified in recent times.

The Roanoke Hearing Office has eight ALJs, three of whom have fewer than two years of experience on the job. The newest judge has been with the office only since June of this year. The office has had significant ALJ turnover over the past several years, and has lost eight judges to retirement or transfer. SSA has assigned eight new judges in the same period; seven of these judges were new to the position or had less than one year of experience as an ALJ when they reported. The office has 48 employees.

For fiscal year 2012, through August, the Roanoke hearing office has received 3,690 hearing requests, an average of 335 cases per month. We have issued 3,643 decisions, so we have processed close to 99% of total receipts. We have just under 4,700 cases pending in our office, an average of over 580 cases pending per judge. Our average processing time is 432 days from the request for hearing to decision.

The Roanoke hearing office has an allowance rate of 57% for fiscal year 2012. The judges have an allowance rate of 55%, with most judges having an allowance rate between 45 and 57%. The difference in allowance percentage between the overall office rate and the judges represents favorable decisions processed by our senior attorneys.

As a HOCALJ, it is my job to make sure that the office functions smoothly, and that we process cases fairly and efficiently. I strive to ensure that my hearing office handles hearing requests in an orderly manner. I work with three other office managers to make sure cases are worked up and ready for a hearing, that they are assigned to judges to allow them to hold hearings, and that writers draft legally sufficient decisions. I monitor the workloads of the judges to make sure they have sufficient cases at various stages of the process to allow them to review cases before scheduling, hold hearings, and issue decisions.

A hearing office has many working parts, all of which need to operate smoothly to maintain both quality and productivity. The senior case technicians prepare the files and get them ready for hearing; the judges hold the hearings; and then the writers must draft, based on directions they receive from the judges, legally sufficient and defensible decisions. As HOCALJ, I work with my fellow supervisors to manage performance, quality, and productivity at each phase of a case's development and resolution.

I work with the ALJs in the office to make sure they are aware of monthly and yearly goals, that they move cases through each stage of the process in a timely manner, and that they issue quality decisions as quickly as possible. If the judges are having a problem, I help them resolve the issue so that they can continue doing their job. I try to lead by example.

Let me emphasize that while I can take actions to ensure that ALJs move their caseloads and apply the law and our policies correctly, the Administrative Procedure Act grants all ALJs "qualified decisional independence." "Qualified decisional independence" means that ALJs must be impartial in conducting hearings. They must decide cases based on the facts in each case and in accordance with the agency's policy, as set out in the regulations, rulings, and other policy statements. It also means, however, that ALJs make their decisions free from agency pressure or pressure by a party to decide a particular case, or a particular percentage of cases, in a particular way. If I see a performance or quality issue with an ALJ that I need to address, I will discuss the issue with the judge as soon as possible to ensure that the ALJ's actions are consistent with the agency's policy, and that the ALJ is performing at an acceptable level of productivity. While I exercise appropriate management oversight over the ALJs in my office and can take a number of actions to help ALJs improve their performance, I cannot and do not interfere with or influence the ultimate decision in any case.

Thank you for the opportunity to be here today. I would be happy to answer any questions that you may have.

HEARING BEFORE

THE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

UNITED STATES SENATE

SEPTEMBER 13, 2012

STATEMENT
OF
JUDGE OLLIE L. GARMON, III
REGIONAL CHIEF ADMINISTRATIVE LAW JUDGE
ATLANTA REGION
OFFICE OF DISABILITY ADJUDICATION AND REVIEW
SOCIAL SECURITY ADMINISTRATION

Mr. Chairman, Ranking Member Coburn, Members of the Subcommittee:

My name is Ollie L. Garmon, III, and I serve as the Regional Chief Administrative Law Judge (RCALJ) for Region IV (Atlanta). The Montgomery, Alabama hearing office (HO) is one of the offices in the Atlanta region. I have 21 years' experience as an ALJ, 3 years as a Hearing Office Chief ALJ (HOCALJ), 4 years as the Assistant to the RCALJ, and 9 years as the RCALJ.

As an RCALJ, I provide general oversight for all program and administrative matters concerning our hearings process in the Atlanta region. The Atlanta region is composed of 37 hearing offices, nearly 400 administrative law judges, and a total staff of nearly 2,300 people in following eight states: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. This region serves a population of about 60 million citizens. We have approximately 25 percent of the agency's hearings caseload, which results in more than 200,000 decisions per year.

I began my legal career in the private sector as an associate for a law firm; I then became a sole practitioner, after which I organized and was a partner in a law firm. During this same time, I served in the public sector as a city attorney and was elected county prosecuting attorney for a 4-year term. In 1979, I was elected for a 4-year term to a full time judicial position of county court judge where I also served as a juvenile court judge. Afterwards, I was appointed by the Governor of the State of Mississippi to the position of Commissioner of the Mississippi Workers' Compensation Commission for a 6-year term.

One of the Hearing Offices in Region IV is located in Montgomery, Alabama. The Montgomery Office's service area includes Alexander City, Anniston, Auburn, Demopolis, Montgomery, Opelika, Selma, and Tuskegee.

The Montgomery Office currently has 10 judges. We expect two new judges to report for duty on September 24, 2012. The support staff for the ALJs includes a mix of attorney advisors, paralegal specialists, and legal assistants. The office has a high transfer rate for ALJs, who frequently request reassignment to other offices.

In fiscal year (FY) 2011, the Montgomery Office received 8,357 cases for adjudication and issued 7,252 dispositions. In FY 2012 to date, the office has received 6,540 cases for adjudication and issued 6,246 decisions. The Montgomery Office currently has 8,323 cases pending and the current average processing time is 430 days. The rate of average dispositions per ALJ per day is 2.37. .

Let me emphasize that while I can take actions to ensure that ALJs move their caseloads and apply the law and our policies correctly, the Administrative Procedure Act grants all ALJs "qualified decisional independence." "Qualified decisional independence" means that ALJs must be impartial in conducting hearings. They must decide cases based on the facts in each case and in accordance with the agency's policy, as set out in the regulations, rulings, and other policy statements. It also means, however, that ALJs make their decisions free from agency pressure or pressure by a party to decide a particular case, or a particular percentage of cases, in a particular way. If I see a performance or quality issue with an ALJ that I need to address, I will

discuss the issue with the judge as soon as possible to ensure that the ALJ's actions are consistent with the agency's policy, and that the ALJ is performing at an acceptable level of productivity. While I exercise appropriate management oversight over the ALJs in my offices and can take a number of actions to help ALJs improve their performance, I cannot and do not interfere with or influence the ultimate decision in any case.

Thank you for the opportunity to be here today. I would be happy to answer any questions that you may have.

United States Senate
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Committee on Homeland Security and Governmental Affairs

SOCIAL SECURITY DISABILITY PROGRAMS: IMPROVING THE QUALITY OF BENEFIT AWARD DECISIONS

MINORITY STAFF REPORT

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

UNITED STATES SENATE

RELEASED IN CONJUNCTION WITH THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS SEPTEMBER 13, 2012 HEARING

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SOCIAL SECURITY DISABILITY PROGRAMS: IMPROVING THE QUALITY OF BENEFIT AWARD DECISIONS

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SOCIAL SECURITY DISABILITY PROGRAMS: IMPROVING THE QUALITY OF BENEFIT AWARD DECISIONS

In April 2012, the Social Security Trustees estimated the Social Security Disability Trust Fund, which supports the Social Security Disability Insurance (SSDI) program, could be exhausted by 2016.[1] Under a "high-cost" scenario, a less-likely but still realistic possibility, the Trustees estimated the Disability Trust Fund could be exhausted as early as 2015. To stave this off, the Trustees suggested that "legislative action is needed as soon as possible."

Significant stress on the trust fund is due in part to the fact that the number of individuals receiving disability benefits continues to rise at an unprecedented rate. Understanding this phenomenon is a complicated analysis. Researchers at the Center for American Progress assert the "program provides strong incentives to applicants and beneficiaries to remain permanently out of the labor force, and it provides no incentive to employers to implement cost-effective accommodations that enable employees with work limitations to remain on the job."[2] These researchers determined that "too many work-capable individuals involuntarily exit the labor force and apply for and often receive," Social Security Disability Insurance.[3] Such a conclusion raises questions as to whether benefits are going to those Congress intended when it created the disability programs.

The stress to the disability system was likely exacerbated when the financial crisis hit in 2008, resulting in a number of individuals losing jobs and, in turn, employer sponsored health insurance benefits. Census data indicated that between October 2008 and June 2010, job losses among workers with disabilities far exceeded those of workers without disabilities.[4] Without health insurance, it is possible that chronic conditions held in check by medicine and treatment worsened and became more difficult to manage or even became disabling. Those workers potentially turned to Federal disability insurance. In other cases, workers with disabling conditions who had refrained from applying for disability insurance because they were able to manage their

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[1] The 2012 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, http://www.ssa.gov/oact/tr/2012/tr2012.pdf.
[2] Center for American Progress, Autor and Duggan, Supporting Work: A Proposal for Modernizing the US Disability Insurance System, January 2010, http://www.americanprogress.org/wp-content/uploads/issues/2010/12/pdf/autordugganpaper.pdf.
[3] Id.
[4] H. Stephen Kaye, Ph.D., The impact of the 2007-09 Recession on Workers with Disabilities, Vol. 133, No. 10, October 2010, http://www.bls.gov/opub/mlr/2010/10/art2exc.htm.

impairments and sustain work, lost those paychecks, and then applied for disability insurance payments.

Whatever the reason, the result is that 5.9 million Americans have been awarded SSDI benefits since January 2009.[5] Economists estimate that Americans added to the disability rolls could account for as much as a quarter of the two percent drop in the labor force participation rate since 2007.[6] Reports also show that the country's population between the ages of 25 and 64 receiving SSDI benefits rose to a record-high of 5.3 percent in March 2012, compared to 4.5 percent in 2007. Applications for disability benefits filed by this age group rose to 18 per 1,000 last year, up from 8 per 1,000 in 1990.[7] Amid all the statistics, one thing is clear: more Americans than ever are turning to the disability programs to make ends meet and more work is needed to ensure scarce benefits go only to the disabled.

The flood of Social Security disability applications over the past few years has tested the agency's resources and personnel. As a result, disabled Americans are waiting longer and longer before receiving the benefits they deserve. Many now wait as long as two years before having their application finalized.

Oversight of these programs by Congress, however, is critical to the long-term vitality of this important safety net. Congress and Social Security Administration (SSA) need to ensure that benefits are protected for those who would choose to work, but cannot do so because of their disability. Every person who is wrongfully added to the disability rolls by the agency takes money out of the pockets of the disabled.

If Congress fails to ensure the financial sustainability of our nation's disability programs, everyone loses. Taxpayers will bear heavier costs; the Social Security Administration will have to do more with less; and most worrisome, there will be nothing left to give to those who need it most.

Over the past two years, the U.S. Senate Permanent Subcommittee on Investigations has conducted several bipartisan inquiries into aspects of the Social Security Administration's disability programs, including how

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[5] Award statistics collected from Social Security Administration, Office of the Chief Actuary, Beneficiary Data, Benefits Awarded by Type of Beneficiary, http://www.ssa.gov/OACT/ProgData/awards.html. Information does not account for beneficiaries leaving the SSDI rolls.

[6] Daniel Hartley, Federal Reserve Bank of Cleveland, The Labor Force: To Work or Not to Work (Fall 2011), http://www.clevelandfed.org/Forefront/2011/fall/ff_2011_fall_06.cfm.

[7] Alex Kowalksi, Disabled Americans Shrink Size of U.S. Labor Force, Bloomberg, May 3, 2012, http://www.bloomberg.com/news/2012-05-03/disabled-americans-shrink-size-of-u-s-labor-force.html.

it processes applications. To increase its understanding, the Subcommittee undertook a review of the quality of disability claims approved by the agency at the initial application stage and each level of appeal. This Report describes the investigation's review, findings, and recommendations.

I. EXECUTIVE SUMMARY

A. Investigation Overview

On March 1, 2011, the Subcommittee requested that SSA provide case files, with personal information removed, for SSA beneficiaries accepted into the SSDI or Supplemental Security Income (SSI) program from three specific counties in Virginia, Alabama, and, Oklahoma, reflecting different levels of *per capita* enrollment in the SSDI and SSI programs. After the Subcommittee provided selection criteria, SSA randomly selected 300 electronic case files, 100 from each specified county that met the criteria.[8] The cases provided a cross-section of applicants who were awarded disability benefits at different stages of review within SSA: initial application, reconsideration, appeal before an administrative law judge (ALJ), or appeal before the Social Security Appeals Council.

The Subcommittee requested only cases in which disability benefits were awarded, and not any cases in which benefits were denied, in order to focus on the process and analysis performed by the agency (at each level of review and appeal) in determining when a claimant met the program's definition of disability. The Subcommittee was interested, in particular, in how the agency handled a claimant's available medical evidence and the evidence needed to support an award of benefits under existing program rules. The investigation examined the decisions reached, rationale used, subjective claimant testimony, objective medical evidence, any expert or physician opinions rendered, and other relevant evidence contained in the case files provided by SSA.

In conducting its investigation, the Subcommittee consulted with SSA disability experts, SSA Administrative Law Judges, and others. It reviewed not only the 300 case files, but also SSA policies, procedures, guidelines, regulations, administrative decisions, and court cases.

By limiting its review to 300 case files from three counties, the Subcommittee was able to drill down into the specifics of each case. The resulting findings are representative of each county and provide a detailed case study of how disability approval decisions are made, their weaknesses, and how they can be improved. While the resulting findings cannot be statistically extrapolated into a nationwide analysis of SSA disability cases, the same types of issues affected decisions across all three counties, suggesting they may be a factor elsewhere in the nation.

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[8] The SSA Office of the Inspector General reviewed SSA's proposed sampling methodology and stated to Subcommittee staff they had "no comment" with regard to the methodology.

B. Findings of Fact

Based upon its review of the 300 disability case files, the Report makes the following findings of fact.

(1) **Low Quality Decisions.** The investigation's review of 300 disability case files found that more than a quarter of agency decisions failed to properly address insufficient, contradictory, or incomplete evidence. The report's findings corroborate a 2011 internal quality review conducted by SSA itself, which found that on average nationwide, disability decisions made at the ALJ level had errors or were insufficient 22 percent of the time. The three counties examined by the Subcommittee are in regions with even higher individual error rates, according to SSA, of between 23-26 percent. It is likely that the three counties had error rates in excess of their regional averages, raising serious questions about the quality of their decisions. ALJs also failed in some cases to adequately analyze the effect of factors such as obesity and drug and alcohol abuse on a claimant's impairment.[9]

(2) **Insufficient and Contradictory Medical Evidence.** In many cases, at both the initial and appellate levels of review, the state-based Disability Determination Services (DDS) examiners and SSA Administrative Law Judges (ALJs) issued decisions approving disability benefits without citing adequate, objective medical evidence to support the finding; without explaining the medical basis for the decision; without showing how the claimant met basic listing elements; or at times without taking into account or explaining contradictory evidence.

(3) **Poor Hearing Practices.** Some SSA ALJs held perfunctory hearings lasting less than 10 minutes, misused testimony provided by vocational or medical experts, and failed to elicit hearing testimony needed to resolve conflicting information in a claimant's case file.

(4) **Late Evidence.** Some case files showed that disability applicants, usually through their representatives, submitted medical evidence immediately before or on the day of an ALJ hearing or after the hearing's conclusion, a practice leading to

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[9] Given the high number of questionable decisions, a similar review of claimants the agency denies is needed to ensure that benefits are not being denied to individuals that are disabled.

confusion about the supporting evidence and inefficiencies in case analysis.

(5) **Inconsistent Use of Consultative Examinations by ALJs.** In many cases before ALJs, Consultative Examinations (CEs) submitted on behalf of either SSA or a claimant were either summarily dismissed or heavily relied upon, with little to no explanation. In addition, the CEs themselves often consisted of little more than conclusory statements with insufficient reference to objective medical evidence or how the CE's findings related to other evidence in the case file.

(6) **Misuse of Medical Listings.** In many case files, ALJ opinions failed to demonstrate how a claimant met each of the required criteria in the SSA's Medical Listing of Impairments to qualify under "Step Three" in the application process. Awards at Step Three are reserved for those who have medical conditions SSA has determined to be severe enough to qualify an applicant for benefits.

(7) **Reliance on Medical-Vocational Guidelines.** The majority of disability awards reviewed by the Subcommittee at the ALJ level utilized SSA medical-vocational grid rules. A recent SSA analysis found that benefit awards were made under these grid rules at a rate of 4 to 1, compared to awards made due to a claimant's meeting a medical listing. At times, these decisions were the result of a claimant's representative and the ALJ negotiating an award of benefits by changing the disability onset date to the claimant's 50th or 55th birthday.

(8) **Outdated Job List**. Some case files showed DDS examiners and ALJs relied on the Department of Labor's outdated Dictionary of Occupational Titles (DOT), which SSA is in the process of replacing with a new Occupational Information System, to identify jobs open to claimants with limited disabilities. The last major revision to the DOT occurred in 1977, yet the new database is not expected to be ready until 2016. In the meantime, SSA disability decision-makers will continue to rely on the DOT which does not reflect current labor market trends or jobs available in the national economy.

C. Recommendations

The Report makes the following recommendations:

(1) **Require Government Representative at ALJ Hearings.** To ensure key evidence and issues are properly presented, reduce instances in which SSA ALJs overlook evidence indicating a claimant is not disabled, and increase consistency and accountability in ALJ decision-making, a representative of the agency should participate in all ALJ disability hearings and decisions. Including a government representative at the ALJ Level has long been a recommendation of both the Association of Administrative Law Judges and the Social Security Advisory Board.[10] Congress should specifically designate funds for such a program.

(2) **Strengthen Quality Review Process.** The new ALJ review process initiated by the Quality Division of the Office of Appellate Operations should be expanded and strengthened by conducting more reviews during the year and developing metrics to measure the quality of disability decisions. Such information should be made available to Congress.

(3) **Close the Evidentiary Record.** To eliminate the confusion, inefficiencies, and abuses associated with the current practice of allowing medical evidence to be submitted at any point in a disability case, the evidentiary record should close one week prior to an ALJ hearing, with exceptions allowed only for significant new evidence for which exclusion would be contrary to the public interest.

(4) **Strengthen Use of Medical Listings.** SAA should provide additional training to ALJs on the use of SSA Medical Listings, and direct ALJ decisions to identify how a claimant meets each required element of a listing, citing objective medical evidence and not just conclusory statements by an expert.

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[10] See Social Security Advisory Board, Charting the Future of Social Security's Disability Programs: The Need for Fundamental Change, January 2001, http://www.ssab.gov/publications/disability/disabilitywhitepap.pdf; Testimony of Association of Administrative Law Judges, Committee on Ways and Means, Subcommittee on Social Security and The House Committee on the Judiciary, Subcommittee on Courts, Commercial and Administrative Law, July 22, 2011.

(5) **Expedite Updated Job List**. SSA should move more quickly to ensure the Occupational Information System can serve as a usable replacement for the Dictionary of Occupational Titles to identify jobs that claimants with limited disabilities can perform in the national economy.

(6) **Focused Training for ALJs.** The Office of Appellate Operations, Quality Division, should provide training to all ALJs regarding adequate articulation in opinions of determinations that involve both obesity and drug and alcohol abuse. This training should emphasize the proper way to analyze and address these issues as required by law, regulation, and agency guidance.

(7) **Strengthen Consultative Examinations.** Because many disability claimants do not have sufficient funds to obtain detailed medical evidence of their conditions, SSA should determine, with input from ALJs, how to improve the usefulness of agency-funded Consultative Examinations (CEs), including by requiring an explanation of any significant disparity between the CE's analysis and other evidence in the case file.

(8) **Reform the Medical-Vocational Guidelines**. The medical-vocational guidelines should be reviewed to determine if reforms are needed. Additional study should be conducted to evaluate whether the current guidelines utilize the proper factors and if they appropriately reflect a person's ability to work.

II. BACKGROUND INFORMATION ON SOCIAL SECURITY DISABILITY INSURANCE AND SUPPLEMENTAL SECURITY INCOME

Social Security Disability Insurance (SSDI). Congress enacted the SSDI program in 1956 to provide a safety net for individuals who, after working for a time, become disabled and no longer able to provide for themselves. These individuals are awarded disability benefits when certain program qualifications are met, but are too young to qualify for retirement benefits. SSDI provides monthly cash payments to beneficiaries from the SSDI Trust Fund (financed through payroll taxes) based on a beneficiary's past wages. These payments are indexed to reflect changes in national wage levels. To take advantage of the program, a worker must have worked a minimum amount of time to be covered or "insured" by the program.

By the end of December 2010, 10.2 million people were receiving SSDI payments.[11] In total in FY2010, the SSDI Trust Fund paid $124.2 billion in benefits. In FY2011, payments grew to almost $129 billion and for FY2012, SSA estimates that it will pay $134 billion.[12] In sharp contrast, in FY2011, the SSDI Trust Fund will only take in $114 billion.[13] In August 2012, the agency reported 10.8 million individuals were receiving SSDI benefits.[14]

Annual Number of SSDI Beneficiaries in Current Payment Status

Year	Total Number of Beneficiaries	Total Benefits Paid
2006	8.615 million	$ 92.384 billion
2007	8.918 million	$ 99.086 billion
2008	9.274 million	$ 106.301 billion
2009	9.696 million	$ 118.329 billion
2010	10.185 million	$ 124.191 billion
2011	10.614 million	$ 128.900 billion

Source: Information provided by Congressional Research Services
Note: Numbers include all workers, spouses, and children receiving SSDI payments.

Once an individual's application for SSDI is approved, there is a five-month waiting period before he or she begins to receive benefits. SSDI beneficiaries also qualify for Medicare coverage 24 months after SSDI eligibility begins. Benefit payments continue as long as the beneficiary

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[11] Information provided by Congressional Research Service.
[12] Social Security Administration, Office of the Budget, *FY2012 President's Budget., Budget Overview*, February 2012, http://www.ssa.gov/budget/2012BudgetOverview.pdf.
[13] Social Security Administration, Office of the Chief Actuary, *The 2011 OASDI Trustee's Report*, http://www.ssa.gov/oact/TRSUM/index.html.
[14] Social Security Administration, Benefits Paid by Type of Beneficiary, http://www.ssa.gov/OACT/ProgData/icp.html.

remains disabled, or until the beneficiary reaches the full retirement age. Very few individuals leave the disability rolls by returning to work or medical improvement; most simply convert automatically to retirement benefits at the Federal retirement age (FRA).

Reasons for SSDI Worker Benefit Terminations, 2011

Reason for Termination	Number of Beneficiaries	Percentage of Terminations
Reached Full Retirement Age	338,222	51.73%
Death	235,734	36.05%
Return to Work	39,813	6.09%
Medical Improvement	23,271	3.56%
Other	14,759	2.26%
Elect Retirement Benefit	2,078	0.31%
Total Terminations/Suspensions	653,877	100.0%

Source: Social Security Administration, *Benefits Terminated for All Disabled Beneficiaries*, Table 50, Number, by reason for termination 2011, http://www.ssa.gov/policy/docs/statcomps/di_asr/2011/sect03f.html#table50.

Supplemental Security Income (SSI). Unlike SSDI, SSI (established in 1972) is a means-tested benefit paid to the disabled poor, elderly, and blind who have limited income and resources. To qualify for the SSI program, an individual must meet the same definition of "disability" as under the SSDI program, but also only have a maximum of $2,000 of countable resources ($3,000 for a married couple). An individual may qualify for both SSI and SSDI.

Under program regulations, a number of items are excluded from what is considered an individual's resources, including: a house and the land it is on; a vehicle, regardless of value; household goods and personal effects; and cash accounts with certain designations.[15] An individual does not need to meet the same work history requirements as the SSDI program to receive benefits, only maintain countable resources below the $2,000 limit. SSI payments change with a beneficiary's monthly earnings, resources, and living conditions. Individual financial circumstances often change, requiring SSA to frequently reassess recipients' eligibility for benefits.

The SSI program is funded through the Federal Government's General Fund, which is financed by tax payments from the American public. In most States, SSI recipients also receive Medicaid and food assistance. In FY2012, SSA expects to pay out almost $51 billion in Federal and State Supplementation benefits to about 8.3 million SSI recipients.[16]

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[15] All examples provided by SSA. For a comprehensive list of excludable resources, see http://www.ssa.gov/ssi/text-resources-ussi.htm.

[16] Information provided by Social Security Administration.

SSI benefits and administrative expenses are considered mandatory spending. According to SSA, the actual amount dispersed in FY2011 was $52.4 billion in Federal benefits and $3.8 billion spent in beneficiary services.[17] In FY2012, the program is estimated to spend $48.1 billion in benefits and cost $3.7 billion in beneficiary services, administration, and research.

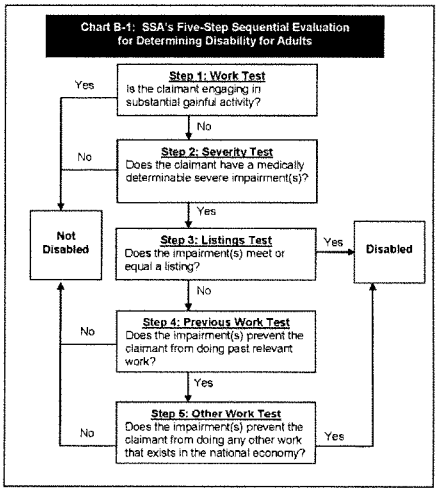
Annual Number of SSI Beneficiaries in Current Payment Status

Year	Number of Recipients	Total Benefits Paid
2006	5,829,765	$ 30.783 billion
2007	5,959,794	$ 32.771 billion
2008	6,118,824	$ 34.475 billion
2009	6,322,253	$ 38.130 billion
2010	6,556,915	$ 40.076 billion
2011	6,930,667	$ 41.464 billion

Source: Information prepared by Congressional Research Service
Note: Numbers include all blind and disabled receiving SSI payments.

Due to complex program rules and inadequate program administration, SSA made $4 billion in overpayments to SSI recipients in 2009, who did not properly report assets.[18]

Definition of "Disability." To qualify for SSDI or SSI a claimant must meet SSA's definition of disability, which is defined as the inability to engage in substantial gainful activity (SGA) due to a medically determinable physical or mental impairment expected to result in death or last at least 12 months. SGA is essentially



[17] Social Security Administration FY2013 Presidents Budget, Key Tables, Table 6, http://www.ssa.gov/budget/2013KeyTables.pdf.

[18] SSA Inspector General O'Carroll also reported that SSA made $800 million in underpayments to SSI recipients, putting the program as a whole at a 10 percent improper payment rate. This is based on the fact that in 2009, SSA paid $48.3 billion to SSI beneficiaries. *See* Testimony of SSA Inspector General Patrick O'Carroll before the United States House of Representatives, Subcommittee on Social Security, Committee on Ways and Means (June 14, 2011), http://waysandmeans.house.gov/UploadedFiles/ocarrol222.pdf.

determined by the amount of money a claimant makes per month. If a claimant is earning over $1,000 a month, they are generally deemed to be performing SGA.

In order for the agency to award benefits, SSA must find the claimant unable to perform any kind of work that exists "in the national economy," taking into account age, education, and work experience. For many years, SSA has used a guidebook called the Dictionary of Occupational Titles (DOT), previously maintained by the Department of Labor, in determining the types of jobs that exist for individuals alleging disability.[19] The last major revision to the DOT by the Department of Labor was in 1977. In 2008, SSA determined to replace the DOT with a new database called the Occupational Information System (OIS). In July 2011, SSA determined that it could replace the DOT with the new OIS by 2016, but at a cost of $108 million. A 2012 Government Accountability Office (GAO) report stated that, by February 2012, SSA had made progress on this effort, but it was too early to tell if the 2016 deadline would be met.[20]

The Application and Appellate Process. Once a claimant files an application for disability benefits with SSA, it is forwarded to a central office in the person's home state, called the state disability determination service (DDS). There is one DDS office in each state, which provides an initial determination based on the medical evidence in the claimant's file. Due to an historical anomaly, DDS employees are employees of the various state governments, though they are paid by funds from SSA. Each state's DDS contracts with SSA to adjudicate medical eligibility for disability benefits under SSDI and SSI rules and regulations.

If the claimant does not provide all of his or her own medical evidence, DDS will contact the claimant's doctor(s) to request the medical evidence on behalf of the claimant. The DDS then conducts a five-step sequential evaluation (outlined in the graphic above) to determine if an applicant is disabled. An applicant can be denied at any step, even if they meet a later criterion.

Functional/Vocational Grids (Step 5 Analysis). While a claimant's medical condition may be severe enough to qualify for benefits at step three, under SSA's current rules most claimants qualify for benefits at step five under an analysis of their residual functional capacity (RFC). An RFC measures what an individual can still do despite their functional limitations caused by alleged medically determinable mental or physical

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[19] Information provided by the Social Security Administration.
[20] Government Accountability Office, Modernizing SSA Disability Programs, Program Made, but Key Efforts Warrant More Management Focus, GAO-12-420, http://gao.gov/assets/600/591701.pdf.

impairments. The RFC is determined by the adjudicator at each level of decision. The RFC is an individual's maximum remaining ability to perform sustained work on a regular and continuing basis for eight hours a day, five days a week, or an equivalent work schedule.[21] The agency then determines if the claimant can do any other work that exists, considering the individual's RFC, age, education, and work experience.

In 1979, SSA issued regulations aimed at standardizing decision-making at step five where the agency considers whether the claimant can perform any job that exists in the national economy. To implement those regulations, SSA also developed Medical-Vocational Guidelines for DDS examiners and ALJs to use when analyzing a particular case.

The Medical-Vocational Guidelines include three charts or "grids." Each grid corresponds to a claimant's ability to perform certain types of work determined by the decision-maker: sedentary; light; or medium. Columns related to a claimant's age, education, and work history are also factored into these grids.[22] Once the DDS or ALJ adjudicator determines the level of work a claimant is capable of performing and assigns the person to the sedentary, light, or medium grid, the adjudicator can then use the additional factors in the grid involving age, education, and work experience, to determine whether SSA policy indicates that the examiner or ALJ should find the individual to be disabled. The vocational grids direct a finding of disabled or not disabled only when all of the criteria of a specific rule are met. The analysis can be complicated. The Social Security Advisory Board has explained:

> The medical-vocational guidelines, which are based solely on the capacity for physical exertion, function as reference points, or guiding principles, for cases involving severe non-exertional impairments. If a claimant's impairment is non-exertional (e.g., postural, manipulative, or environmental restrictions; mental impairment) or if the claimant has a combinational of exertional and non-exertional limitations, the vocational rules will not direct the conclusion of the claim. Instead the adjudicator will use the guiding principles to evaluate the case. This is often a difficult area for adjudicators and results in more subject decision making.[23]

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[21] SSR 96-9R: Policy Interpretation Ruling, Titles II and XVI: Determining Capability to do Other Work – Implications of a Residual Functional Capacity for less than a full range of sedentary work, effective/publication date: 07/02/96.
[22] *See* 20 C.F.R. Appendix 1 to Subpart P or Part 404 – Listing of Impairments.
[23] Social Security Advisory Board, Aspects of Disability Decision Making: Data and Materials, February 2012, http://www.ssab.gov/Publications/Disability/GPO_Chartbook_FINAL_06122012.pdf.

These guidelines provide standardized guidance intended to eliminate the time, costs, and inconsistencies associated with SSA decision-makers analyzing specific claimant circumstances. With regard to age, under the grids, once an individual reaches 50 years old (categorized as "closely approaching advanced age"), the vocational guidelines make it easier for those persons to meet the disability standard. The rules provide even more favorable outcomes for persons 55 years old or older (categorized as "advanced age"). SSA has determined that at those ages, it is less likely an individual will be able to learn a new skill to perform new types of jobs.

The portion of the grid governing disability determinations for individuals that are 55 and older (or advanced age) that are limited to sedentary work is excerpted below:

Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s)

Rule	Age	Education	Previous work experience	Decision
201.01	Advanced age	Limited or less than high school	Unskilled or none	Disabled
201.02	Advanced age	Limited or less than high school	Skilled or semiskilled—skills not transferable	Disabled
201.03	Advanced age	Limited or less than high school	Skilled or semiskilled—skills transferable	Not disabled
201.04	Advanced age	High school graduate or more—does not provide for direct entry into skilled work	Unskilled or none	Disabled
201.05	Advanced age	High school graduate or more—provides for direct entry into skilled work	Unskilled or none	Not disabled
201.06	Advanced age	High school graduate or more—does not provide for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Disabled
201.07	Advanced age	High school graduate or more—does not provide for direct entry into skilled work	Skilled or semiskilled—skills transferable	Not disabled
201.08	Advanced age	High school graduate or more—provides for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Not disabled

"Less than Sedentary" RFC. The agency has ruled that to be categorized as able to perform sedentary work, an individual must be able to sustain sitting six hours of an eight hour work day and be able to

occasionally lift ten pounds. If the adjudicator determines the claimant cannot perform those functions, or their equivalent, the adjudicator can find the individual has a "less than sedentary" residual functional capacity (RFC). The agency, in Social Security Ruling 96-9p, explained that "an RFC for less than a full range of sedentary work reflects very serious limitations resulting from an individual's medical impairment(s) and is expected to be relatively rare." The same ruling made clear that the ability to perform less than sedentary work "does not necessarily equate with a decision of 'disabled.'"

Social Security Ruling 96-8p. DDS examiners and ALJs may also rely on Social Security Ruling 96-8p in approving claims related to an individual's ability to engage in an eight hour work day.[24] This ruling provides that an individual must be able to sustain work-related physical and mental activities in a work setting on a regular and continuing basis. A "regular and continuing basis" is defined eight hours a day, for five days a week, or an equivalent work schedule. If the individual's alleged impairments prevent participation in a full workday, the agency may award disability benefits.

The guidelines regarding how to treat claimants who are 50 or 55 years of age or older in the three Medical-Vocational Guideline grids have not been revised in more than 25 years. Several years ago, SSA considered raising the ages to reflect "adjudicative experience, advances in medical treatment and healthcare, changes in the workforce since [SSA] originally published [the] rules for considering age in 1978, and current and future increases in the full retirement age under Social Security law," but no action was actually taken.[25]

A Denial Can Be Appealed. If an individual is denied benefits at the DDS evaluation or "Initial Application," in most states, a claimant has four opportunities to appeal the denial: (1) reconsideration, a *de novo* re-evaluation by another DDS examiner; (2) a *de novo* hearing by an Administrative Law Judge (ALJ) in SSA's Office of Disability Adjudication and Review (ODAR); (3) a request for review by the

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[24] *See* SSR 96-8p: Policy Interpretation Ruling, Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims, Effective/Publication Date July 2, 1996, http://www.ssa.gov/OP_Home/rulings/di/01/SSR96-08-di-01.html.

[25] In 2005, under Commissioner Jo Anne Barnhart, SSA attempted to raise the ages in the vocational grids on that basis. *See* Age as a Factor in Evaluating Disability, 70 Fed. Reg. 67101 (Nov. 4, 2005). Almost four years later, under Commissioner Michael J. Astrue, without explanation, the proposed increase in ages was withdrawn. *See* Age as a Factor in Evaluating Disability, 74 Fed. Reg. 21563 (May 8, 2009).

Social Security Appeals Council (SSAC); and (4) an appeal to Federal district court.[26]

Continuing Disability Reviews (CDRs). After an individual is determined to be disabled, SSA is required to conduct periodic medical and work reviews to ensure that beneficiaries continue to qualify for the program.[27] By regulation, these reviews are set for between six months and seven years based on the beneficiary's likelihood of medical improvement.[28] Due to growing numbers of beneficiaries, budget constraints, and the agency's choice to focus resources on the application backlog, however, the agency has not performed all of the required reviews on a timely basis, resulting in a 1.5 million CDR backlog. If the agency were to perform these reviews in accordance with current law, it would result in $15.8 billion in lifetime Federal benefits savings, according to the SSA inspector general.[29]

SSA Quality Reviews. The decisions made by SSA's DDS examiners and ALJs are subject to SSA's Office of Quality Review (OQR).[30] SSA's OQR is charged with assessing the integrity and quality of the administration of SSA programs in headquarters and in the field. Its responsibilities include conducting broad-based studies of SSA's SSDI and SSI programs. OQR shares information about recurring errors, common deficiencies, and policy inconsistencies through its reports.

OQR's key functions include providing support and guidance to program and integrity field staff, ensuring proper case documentation, and delivering quality review feedback to operating components. In addition, OQR's Division of Disability Initial develops disability policy and procedures for conducting quality reviews. Those key functions include analyzing data to identify significant errors, targeting areas needing study to determine corrective action, and issuing prepayment and quality review reports. OQR's Division of Appeals has overall responsibility for the development, coordination, analysis, and reporting of quality review and feedback data at the DDS examiner level and can address similar issues at the ALJ or Disability Determination Board levels.

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[26] In ten states, the first level of appeal, reconsideration by another DDS examiner, is unavailable. *See* POMS DI 12015.100, Disability Redesign Prototype Model, listing the states in which Reconsideration currently does not exist.
[27] 20 C.F.R. §§ 404.1589 and 416.989.
[28] 20 C.F.R. §§404.1590 and 416.990.
[29] Social Security Administration, Office of Inspector General, "Full Medical Continuing Disability Reviews," Report A-07-09-29147 (March 2010).
[30] SSA Organizational Manual, Subchapter TK, Office of Quality Performance, http://www.socialsecurity.gov/org/orgdcqp.htm#oqr.

OQR also works with the Office of Appellate Operations (OAO) to develop a statistically significant sample, most recently of about 3,500 cases, to conduct annual prepayment reviews of SSDI and SSI payments. If the review finds a problem with a particular payment, SSA will withhold payment until adequate information has been provided.

In addition, in 2011, OAO established a Division of Quality (DQ) and instructed DQ staff to begin conducting post-payment "focused quality reviews" (FQRs) to identify recurrent decisional issues in disability cases, problematic patterns in the adjudication of disability cases, and where policy or procedural changes may be needed.[31] As of January 2012, DQ had completed about 16 such reviews for specific ALJs and about three for entire hearing offices. A team of DQ staffers conducts the FQR, which takes about four to five days to complete. Once a team selects a FQR subject, it screens a sample of 60 to 80 cases for a random period against several criteria. Criteria may include: (1) how many decisions were on the record, (2) how many were bench decisions, (3) how long a hearing lasted, (4) whether claimants submitted additional evidence after a DDS examiner decision, (5) whether a case file included opinion evidence after the DDS determination, or (6) whether case files included opinion evidence from treating, examining, or non-examining sources. DQ staff then conducts a more in-depth review of about 25 percent of the screened cases and issues a report on its findings. The report and its findings are discussed with the ALJs that were the subjects of the review and could be used by SSA when taking formal disciplinary action against an ALJ for consistently issuing disability decisions that are legally insufficient.

A 2011 report summarizing the DQ reviews reported that DQ staff found, after reviewing disability decisions across the country, that 22 percent contained errors, meaning the DQ reviews identified a quality problem in more than one out of five disability cases.[32] At the same time, it is important to note that DQ reviews may identify a quality error in a decision without also finding that the decision on whether to award

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[31] When DQ finds, based on its sampling of pre-payment cases, that there is a much higher-than-average rate of review for an ALJ or hearing office, then it may conduct an FQR to evaluate what may be a problematic pattern in the adjudication of disability cases. The Office of Appellate Operations also selects subjects for FQRs based on various analyses. The Office of Appellate Operations also works with the ODAR Division of Management Information and Analysis, as well as the SSA Office of Quality Performance, to develop algorithms to improve the selection process for additional FQRs. Office of Appellate Operations, Executive Director's broadcast, 1/13/12.

[32] *See* Fiscal Year 2011, Final Actions Report, Division of Quality, February 8, 2012, provided to the Subcommittee by the Social Security Administration. The Appeals Council took own motion review on 22 percent of the 3,692 decisions reviewed. Six hundred sixty-five of those cases were remanded to hearing offices for further development because the record was not sufficient to render a decision.

disability benefits was incorrect.[33] Of the cases identified by DQ as containing an error, the Office of Appellate Operations, on its own motion, remanded 82 percent to the originating hearing office for further development because the record was not sufficient to render a decision.[34] The cases selected for review were selected using a random selection sampling process.

The 2011 DQ report not only reported a national error rate of 22 percent for SSA decisions as a whole, it also provided a chart identifying the extent of problematic cases found in each SSA regional office. When broken down by region, the rate ranged from a low of 15.5 percent (Region 8) to a high of 26.2 percent (Region 6).[35]

Own Motion Rate by Region

As stated above, the Council took own motion on 22% of the 3692 decisions reviewed. The regional own motion rate ranged from 15.5% (Region 8) to 26.2% (Region 6), with an average rate of 22% and an overall rate of 22%.

		Own Motion			
Region	EFF	REM	DEC	OM Rate	Total Cases
1	160	34	8	20.8%	202
2	259	75	10	24.7%	344
3	279	72	15	23.8%	366
4	278	72	12	23.2%	362
5	305	57	11	18.2%	373
6	256	77	14	26.2%	347
7	259	61	17	23.1%	337
8	273	39	11	15.5%	323
9	272	60	20	22.7%	352
10	269	53	11	19.2%	333
NHC	270	65	18	23.5%	353
Total	2880	665	147	22.0%	3692

The three ODAR hearing offices examined in this Report are encompassed within the chart's statistics. The ODAR hearing office in Oklahoma City, Oklahoma is part of Region 6, which had the highest error rate of 26.2 percent. The ODAR hearing office in Montgomery, Alabama is part of Region 4, which had a 23.2 percent error rate. Finally, the ODAR hearing office in Roanoke, Virginia is located in Region 3, which had a 23.8 percent error rate.

The Office of Appellate Operations DQ staff reports its data and findings (but no recommendations) to the Office of the Chief Administrative Law Judge and ODAR executives for whatever educational or other action they deem appropriate.

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[33] Id. at 2.
[34] Id.
[35] Id. at 6.

After receiving the DQ data collected in 2011, ODAR responded by developing and implementing mandatory continuing education training for ALJs beginning in January 2012. The first three training topics address the following issues in detail:

- Assessing Credibility;
- Phrasing the Residual Functional Capacity; and
- Evaluating Medical Source Statements.

These issues were also identified by the Subcommittee investigation as problems, as further discussed with regard to specific case files below.

III. BACKGROUND ON SELECTION OF 300 DISABILITY CASE FILES

To examine the process used by SSA to award benefits to individuals in both the SSDI and SSI programs, the Subcommittee developed a case study based upon detailed analysis of 300 specific case files. The case files were selected to reflect certain common diagnoses asserted by disability applicants, as well as decisions made at the initial application and each subsequent level of appeal.

Selection of Counties. To ensure that the 300 case files reflected different types of counties, the investigation examined data to determine whether disability benefits were concentrated in certain parts of the United States. To determine the percentage of individuals receiving disability benefits, the Subcommittee compared U.S. Census Bureau data on the population size of each county in the United States to the data maintained by SSA on the number of SSDI and SSI recipients in each county in the United States.[36] This comparison provided the percentage of the population in each county receiving SSDI or SSI benefits in 2009.

Based on this data, three counties were selected to represent three different levels of population density with regard to individuals enrolled in the SSDI and SSI programs (high, low, and mid-range):

- Low-Density Disability Population: Oklahoma (3.20 percent on SSDI; 2.31 percent on SSI);
- Mid-Range Density Disability Population: Alabama (8.54 percent on SSDI; 12.14 percent on SSDI, SSI, or both); and
- Highest Density Disability Population: Virginia (19.27 percent on SSDI; 20.7 percent on SSDI, SSI, or both).

The county in Virginia had the highest percentage of individuals receiving disability benefits in the country in 2009.

Disability Case Files Requested. In cooperation with the investigation, SSA agreed to obtain 100 case files from each of the specified counties in response to selection criteria specified by the Subcommittee. The first selection criterion was designed to reflect how disability benefits were

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[36] Social Security Administration, Annual Statistical Report on the Social Security Disability Insurance Program, 2009; http://www.ssa.gov/policy/docs/statcomps/oasdi_sc/index.html *compared to* U.S. Census Bureau; State and County QuickFacts; http://quickfacts.census.gov/qfd/index.html.

awarded at the initial application stage and at each subsequent stage in the appellate process in each of the three counties. To ensure a cross-section of the decision-making process, the Subcommittee requested the selection of approximately 20 cases approved to receive disability benefits at the initial application process and then at each of the four subsequent levels of appeal: reconsideration; ALJ hearing; Social Security Appeals Council; and Federal district court. The selection criteria excluded review of any case file in which benefits were denied.

Secondly, to ensure the case files reflected typical disability applicants, the Subcommittee requested that the bulk of the case files be divided among the three most common specific diagnoses, using national percentages for diagnoses of individuals on the disability rolls. The three most common 2009 diagnoses were: musculoskeletal system and connective tissue problems (24.9 percent); mental disorders (27.5 percent); and mental retardation or developmental disabilities (8.9 percent).[37] To ensure consideration of all potential diagnosis groups, the Subcommittee also requested that at least some of the case files reflect all of the remaining diagnosis categories.

Using these selection criteria, SSA developed criteria to randomly select 100 case files from each of the three counties for Subcommittee review.

Redaction of Personally Identifiable Information. Prior to the disability case files being provided to the Subcommittee, SSA removed all personally identifiable information from each case file. The redactions included removing all claimant names, addresses, telephone numbers, dates of birth, tax information, and any other information that could be used to specifically identify a particular claimant. SSA then assigned an identifying number to each case file, such as Oklahoma Case 101.

Contents of the Case Files. The contents of each disability case file were generally uniform. The file generally included a SSA disability application form and associated subjective questionnaire documents completed by the applicant (i.e., questionnaires about a claimant's pain or activities the claimant performed on a daily basis), agency-generated documents relating to case process or appeals, correspondence between the agency and the claimant (or the claimant's representative), and any medical evidence or consultative exams related to the applicant. The quantity and type of medical evidence submitted with each case file varied greatly. Duplicative pieces of medical evidence were frequently

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[37] Social Security Administration, Annual Statistical Report on the Social Security Disability Insurance Program, 2009, Table 6, Distribution by sex and diagnostic group, December 2009, http://www.ssa.gov/policy/docs/statcomps/di_asr/2009/index.html.

provided in applications where the claimant was represented by an attorney or claim representative. The size of each case file varied greatly, ranging from just over 100 pages of documents to over 1,500 pages.

Review of Agency Process to Award Disability Benefits. In reviewing the 300 disability case files, the Subcommittee investigation focused on the process utilized by the agency, at all levels, to determine the award of disability benefits. The Subcommittee's review examined the agency's evaluation of evidence, both medical and other, available to support a claim of disability. The amount of medical evidence in each case file varied widely, but when available, generally included medical testing results, physician or therapy progress notes and reports, and general hospital and physician records. The case file also included SSA's evaluation of reports issued by consultative examiners and claimants' subjective allegations made on SSA application forms supplementing disability applications (e.g., reports by claimants of pain, third-party reports of claimant activity, reports on a claimant's ability to perform activities of daily living, and work history).

By reviewing these 300 case files in detail, patterns emerged suggesting areas of weakness and ways in which SSA could improve its awards of disability benefits.

IV. PROBLEMS WITH DECISIONS MADE BY ADMINISTRATIVE LAW JUDGES

Administrative Law Judges (ALJs) play a significant role in the adjudication of disability claims filed with the Social Security Administration (SSA). As a group, ALJs decide approximately 700,000 cases every year, and each ALJ is expected to process at least 500 cases per year.[38] This volume of cases represents nearly a quarter of all of the disability claims filed with SSA in a typical year, all of which must be examined by less than two percent of SSA's workforce.[39] Importantly, in most cases, ALJs effectively provide the final opportunity for claimants who have been denied to make their case for disability benefits.

In the three counties examined by the investigation, benefit award decisions at the ALJ level were fraught with significant problems. These problems ranged from basing decisions on evidence of questionable value, to citing insufficient evidence to support the decision made, misusing expert testimony, and holding perfunctory hearings. The result was a large number of poor quality decisions, raising questions about whether they were decided correctly.

A number of ALJs who spoke with the Subcommittee suggested that at least part of the problem lay in the heavy workload that comes with the job. In recent years, as a concerted effort was made to reduce the growing backlog of undecided disability applications, ALJs were encouraged to decide no fewer than 500 cases per year. Since most cases contain several hundred pages of documents – many over 1,000 pages, including complex medical documents – making a proper decision and producing a high quality written description of that decision on more than one case per day is difficult.

Others pointed out how quality can suffer in some offices because the program's rules have become so complex that applying them correctly is also difficult. There are more than a dozen categories of "medical listings" for which disabled Americans can qualify, each containing subcategories of ailments, which themselves also have subcategories. For claimants that do not have a disability that fits into a medical listing, they can also qualify under the "Medical-Vocational" guidelines. Using lengthy and complex "grids," ALJs must determine if a person's medical condition is severe enough to qualify for benefits based upon age,

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[38] Statement of Michael J. Astrue, Commissioner, Social Security Administration before the Committee on Ways and Means Subcommittee on Social Security, June 27, 2012, http://www.ssa.gov/legislation/testimony_062712.html

[39] Social Security Administration, Hearings and Appeals, Information about Social Security's Office of Disability Adjudication and Review, http://www.ssa.gov/appeals/about_odar.html

education, and past work history. Keeping all of these rules, options, and guidelines straight, and applying them correctly, is a challenge for even the most conscientious and experienced judges.

In addition, even when large numbers of poor quality decisions are identified, senior SSA officials explained that there is little the agency can do to correct the underlying problems, because of the Administrative Procedures Act (APA). The APA, which applies more broadly than to disability programs and the SSA, establishes the principle of "qualified judicial independence" for the work of administrative law judges.[40] This law ensures that, while ALJs remain employees of the Executive Branch, and therefore work for SSA, they retain significant freedom in how they conduct their work.

For claimants, this independence is intended to assure them of a fair and impartial hearing if their initial applications are denied by agency personnel. According to agency officials, however, it can also create an accountability problem in which the agency has little recourse if it disagrees with the manner in which a judge conducts business or makes decisions.[41]

In an interview, the SSA Chief Administrative Law Judge Debra Bice acknowledged the tension between independence and accountability for ALJs.[42] Judge Bice, who has nearly 30 years' experience with Social Security disability programs, much of the time at the agency and some as a claimant representative, is responsible for overseeing over 1,400 ALJs. Having become an ALJ in 2008, Ms. Bice rose to the position of Chief Judge in January 2011.

She told the Subcommittee that one particular concern that has surfaced during her tenure is so-called "high producers" – ALJs that decide a

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[40] *See* 75 Fed. Reg. §§39154, 39156, Final Rules Setting the Time and Place for Hearing Before an Administrative Law Judge (discussing qualified judicial independence).

[41] A March 2012 report of the SSA Inspector General explained: "While the APA and the Act permit SSA to review ALJ decisions, the Agency cannot review ALJ decisions in any manner it chooses. For instance, in October 1981, SSA instituted the Bellmon Review Program where the Appeals Council reviewed pre-effectuation decisions of ALJs with high allowance rates. Under the program, the AC reviewed these ALJs' decisions to determine whether the decisions were correct, and, if they were not, the AC issued final decisions or returned cases to ALJs with instructions for additional actions. The Association of Administrative Law Judges filed suit against SSA and alleged that the Bellmon Review Program violated ALJs' decisional independence. When the district court issued its decision in 1984, it used the Bellmon Review Program. The court did not find that the Bellmon Review Program violated the law, but it did find that focusing review on ALJs with high allowance rates created an 'atmosphere of tension and unfairness which violated the spirit of the APA, if no specific provision thereof.'" SSA Office of Inspector General, "The Social Security Administration's Review of Administrative Law Judge's Decisions," A-07-12-21234, March 2012, http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-07-12-21234.pdf.

[42] Subcommittee interview of Debra Bice (8/3/2012).

disproportionately large number of cases each year. When asked whether she was concerned about the poor quality of work being done by some of the high-producing ALJs, she said she was. She added, however, that she was not sure what the agency could do about it because of the independence ALJs are afforded. In 2011, the Commissioner unofficially capped the number of cases each ALJ can decide at 1,200, which he did by limiting their assignments to no more than 100 per month.[43]

Absent a change in law or program rules, however, Judge Bice told the Subcommittee that she is limited to emphasizing the role of training to better prepare new judges and refresh senior ones. Noting that some judges "hadn't been trained in years," she explained that she now holds quarterly discussions with small groups of judges to talk about their work. Her top advice for judges, she said, is to "never abdicate the role of judge." She explained that the job of a judge is not "just taking a case and paying it," but striving to "make sure they are impartial," and decide each case on its merits.

The Subcommittee also interviewed Judge Patricia Jonas, Executive Director of the Office of Appellate Operations (OAO).[44] Judge Jonas discussed the Division of Quality (DQ) recently established by the OAO. She explained that the DQ is responsible for reviewing unappealed decisions by ALJs and hearing office senior attorney adjudicators. She disclosed that in its first full fiscal year of operation, FY2011, the division found errors in 22 percent of the cases it reviewed, which resulted in OAO's issuing, on its own motion, remand orders or corrective decisions in numerous cases that had not been appealed.[45] In an agency newsletter, the OAO noted the following "top 10 reasons for remand of the unappealed hearing decisions:

- RFC – exertional limitations inadequately evaluated;
- RFC – mental limitations inadequately evaluated;
- Claimant credibility – failed to discuss appropriate credibility factors;
- Drug or Alcohol Abuse – insufficient articulation of [drug and alcohol abuse] rationale;
- RFC – non-mental non-exertional limitations inadequately evaluated;
- Incomplete/inadequate record – record inadequately developed;
- Onset date/closed period/[continuing disability review];

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[43] Id.
[44] Subcommittee interview of Patricia Jonas (7/30/2012 and 8/9/2012).
[45] Office of Appellate Operations, Executive Director's Broadcast, Vol. 3, Special Edition – Quality Review, January 13, 2012.

- RFC – effect of combination or impairments inadequately evaluated;
- Treating source – recontact necessary."[46]

A number of the issues identified by OAO as top concerns mirror the concerns identified by the Subcommittee investigation in this case study.

The following cases illustrate a number of the problems identified by the Subcommittee investigation in its review of the 300 case files.

A. Misuse of Vocational Experts

ALJs rely on vocational experts (VEs) to provide independent third-party analysis during hearings on the capacity of claimants to perform work. In fact, approximately 76 percent of all SSA hearings in FY2010 involved VEs.[47] In the cases reviewed in the investigation, ALJs often cited the testimony of these experts to award disability benefits. However, instead of simply relying on the independent judgments of the VE present at the hearing, a few ALJs at times appeared to ask leading questions and even manipulate the process in a manner that resulted in a finding of disability.

SSA guidance for the use of vocational experts is provided for ALJs in a detailed manual called the "Hearings, Appeals and Litigation Law Manual," or HALLEX. All ALJs are supposed to follow HALLEX guidelines, which were drafted by the SSA Deputy Commissioner for Disability Adjudication and Review for that purpose.[48]

Vocational experts (VEs) are not employees of SSA, but are private contractors paid by the agency for each hearing they attend. Frequently, they work in the field of vocational rehabilitation, developing expertise in helping individuals find work or retraining people looking to get back into the workforce. Most of the ALJ hearings reviewed by the Subcommittee had a Vocational Expert present to testify regarding whether there were jobs the claimant could potentially perform that exist in the national economy. The VE's role is to provide an opinion about whether a claimant's limitations are severe enough to limit their ability to work.

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[46] Id.
[47] Office of the Inspector General, Social Security Administration, Availability and Use of Vocational Experts, May 2012, http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-12-11-11124.pdf.
[48] *See* Social Security Administration, HALLEX I-1-0-1, Purpose. http://www.ssa.gov/OP_Home/hallex/I-01/I-1-0-1.html.

HALLEX provides basic procedures for the use of VEs, but notes: "The ALJ should take care to elicit useful and objective testimony from the VE."[49] ALJs elicit this testimony by asking the VE questions about the claimant, or instead, "The ALJ may use hypothetical questions to elicit the VE's opinion about the availability of jobs that an individual could perform given certain factual situations."[50] The second option allows an ALJ to craft various scenarios to which a VE is required to respond. A vocational expert is not supposed to independently review any claimant's medical records to ensure that the hypothetical they are given match the claimant in the hearing room.

In the cases reviewed in the investigation, VE testimony was usually provided in response to the ALJ posing "hypothetical" questions about claimants with the same disabling conditions as the actual claimant, rather than asking directly about claimant. Under HALLEX guidelines, these hypothetical disabling conditions are supposed to be garnered from the medical evidence of record, going no further.[51] Considering only the hypothetical conditions set by the judge, the VE then opines on whether jobs exist that the claimant could perform. The VE can also testify regarding the number of those jobs that exist in the nation, and sometimes the region.

In some instances, the investigation found ALJs using VEs in inappropriate ways or in ways that failed to yield useful results. In a few cases, the ALJ construed a hypothetical situation so narrowly that it elicited testimony from a VE that no jobs were available. In a number of cases, the hypothetical situations were not supported by the medical evidence of record for the relevant claimant, or were contradicted by the available evidence. At other times, a VE was asked only a single question, seemingly to obtain a pre-determined result. In one instance, when a judge received testimony that jobs were available for the claimant, the ALJ kept asking questions – adding hypothetical limitations each time – until the VE said that no jobs could be found. Using the testimony provided in response to the final question asked, the judge ruled fully favorable for a claimant's disability application. In still another instance, an ALJ misreported the testimony provided by a vocational expert, claiming it supported a decision to award benefits when it did not. Sometimes, testimony from medical experts present at the hearing received similar treatment.

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[49] Social Security Administration, HALLEX I-2-5-55. The Vocational Expert's Testimony. http://www.ssa.gov/OP_Home/hallex/I-02/I-2-5-55.html.

[50] Social Security Administration, HALLEX I-2-6-74. Testimony of a Vocational Expert. http://www.ssa.gov/OP_Home/hallex/I-02/I-2-6-74.html.

[51] Established case law is clear that a hypothetical must match the claimant's medical record. It is not intended to examine a variety of scenarios that are unrelated to a claimant. http://caselaw.findlaw.com/us-9th-circuit/1608455.html.

These actions gave the appearance that the ALJs at times were manipulating the use of expert witnesses to obtain a pre-determined answer. To the extent this happened, expert witnesses were used to give the appearance of independent third-party corroboration of determinations that may not otherwise have been supported by evidence in the case file. Examples of cases raising these issues follow.

Virginia Case 278. ALJ Richard Swartz awarded disability benefits to a claimant for "disorders of back," though two prior DDS examiners had found the claimant was able to work. A functional assessment study conducted by the claimant's physical therapist even suggested the claimant may have exaggerated his pain to restrict his work. Whether or not the claimant was credible, however, this case highlights how the testimony of a vocational expert was used to find a claimant disabled, despite a VE testifying several times during a hearing that jobs were available that the claimant could perform, and never appeared to conclude there was no work for the claimant.

Having applied for disability alleging chronic back pain, the claimant was denied by DDS at both the initial application stage and upon reconsideration. He then appealed to have his case heard by an ALJ.

His case file contained conflicting medical evidence about whether his condition was serious enough to keep him from working. One physical therapist who conducted an exam, for example, stated that based solely on how the claimant presented at the exam, he could do only sedentary work and could not immediately return to his former job. This same therapist, however, found evidence that his claimed symptoms did not properly match his claimed illness. She reported the claimant could not sit during the exam for more than 15 minutes, but wrote, "It should be noted that he drove approximately 1[.5] hours to the clinic this morning ...." In another place, the physical therapist wrote: "Utilizing Waddell's Non-organic physical signs of low back pain, the patient tested positive in 1 of 5 categories." Waddell's tests are performed sometimes to determine if a patient is exaggerating, though they can also simply indicate non-physical reasons for pain. Testing positive in any one of the five areas, as the claimant did, is an indication that some of the pain was not physical and that his claims may not be credible.

The physical therapist concluded this exam by finding some evidence of "inappropriate illness behavior," because of inconsistencies between the physical exam and the claimant's answers to a questionnaire. She also wrote: "The patient's activities qualify him for a sedentary physical demand level of work." After making that determination, however, she also wrote: "Based on the objective findings of the Functional Capacity

Evaluation it would appear that the patient could not return to work at this time. With observed demonstration of the inability to sit greater than 15 minutes or stand greater than 15 minutes, the patient would be ineffective in an office situation. However, this decision as always is left to the discretion and judgment of the referring physician ...."

Several months later, medical records related to a worker's compensation claim, dated February 7, 2007, found the claimant continued to allege pain, prompting discussion of a surgical remedy, but also that the claimant "can return to work tomorrow." His doctor wrote: "[Another doctor] had contemplated a fusion and I concur that this was a reasonable option. The patient declined surgery and continues to decline surgery as of this day's date .... He can return to work tomorrow with restrictions .... I do not see any reason what so ever to escalate or increase his narcotic requirement and do believe that he should be referred to a pain management group so they can wean him from Lortab to anti-inflammatories over-the-counter alone."

On April 2, 2007, both a psychologist and a physician at the DDS level reviewed the claimant's records, each separately noting possible problems related to the claimant's credibility: "Based on the evidence of record, the claimant's statements are found to be partially credible."

At the ALJ hearing, the following exchange between ALJ Richard Swartz and a vocational expert (VE) present at the hearing transpired:

ALJ: Would you give us your assessment of his past relevant work experience?

VE: Yes, sir. The work he did as a welder/fabricator is SVP: 5, which is skilled, and it's classified as heavy exertional level.

ALJ: That basically covers it all?

VE: Yes, it does. He's just a, he's a skilled welder.

ALJ: Okay. Are there any welding jobs at a sedentary, light level so he could transfer these skills to such a thing?

VE: No, most of the welding jobs are between medium and heavy.

Claimant's Attorney: You can stand up long as you need to.

ALJ: If the claimant is about 36 or 37 years old, in that neighborhood. If, with his education level and this past work experience, if he were limited to do the sedentary or light work where he would need some sort of an occupation where he could change positions throughout the workday, more than, more than most standard breaks and lunch, in order to relieve discomfort, can you suggest any jobs at either one of those exertional levels?

VE: As long as he's able to sit, and stand and walk six hours in an eight-hour day, and be productive, there's some unskilled, light exertional level jobs. We have, there's a, a storage rental clerks, storage facility rental clerk. Do you need a DOT numbers on these?

ALJ: No.

VE: On the DOT number, you don't need – 80,500 nationally; 6,400 in the Mid-Atlantic. We have unskilled sales clerk, which is at the light level. There's 164,600 nationally; there's 5,800 in the Mid-Atlantic. We have assembler small parts, there's a – and that's under skilled, light. There's 30,500 nationally, and 4,700 in the Mid-Atlantic region. Do you need more than that, Your Honor?

ALJ: No. How about at the sedentary level? Are there any there for you where you would have the opportunity to change positions occasionally if you wanted to?

VE: Yes.

ALJ: Other than the regular breaks, and so forth.

VE: Yes, your Honor. Again you'd have to be able to sit six hours out of an eight-hour day and be productive. There's a charge account clerk. There's 380,000 nationally, and there's 34,000 in the Mid-Atlantic region. There's an order clerk, 587,000 nationally; 27,400 in the Mid-Atlantic. There's an office clerk with addresser, there's 343,000 nationally, and 17,500 in the Mid-Atlantic. Would you need more than that, sir?

ALJ: No, I guess that would do. Are there any hazards involved in these jobs so if a person had some sort of problem they were required to avoid hazardous situations. Would that be a difficulty in any of these?

VE: No, Your Honor.

ALJ: How about if they were limited to only occasional stooping and crouching? Could they do that, with all of these, with these jobs, would that, would that be a problem?

VE: No, Your Honor.

ALJ: If your discomfort limited you to, to the extent that you were required to change positions from sitting to standing, or standing to sitting, at least briefly in order to relieve discomfort for about every 15 minutes, could you still perform any of these jobs?

VE: It would be, I mean, you, you've got to be productive in an eight-hour work day. I guess it goes with the, the frequency and duration. If he's able to sit and stand every 15 minutes and still be productive, then that would work but if, if he basically having problems staying on task then that would take those jobs away.

ALJ: Okay. He's described to us frequently why he has to just, has to sleep during the day. Could he do that on any of these jobs?

VE: No, Your Honor. The -- you get a 15 minute break in the morning, a lunch break, and 15 minute break in the afternoon, and if he's having to take more than that, then it would probably result in being discharged.

ALJ: He's also testified so some ongoing depression or anxiety that has developed since the time of his accident. If this affects his ability to perform all of the different parts of employment or at least ..., would it compromise any of these jobs?

VE: Not these jobs, your Honor. These are unskilled jobs, but probably unskilled jobs or jobs…30 days…

ALJ: Would he have to be able to work eight hours a day in order to do these jobs, with at least some position or other.

VE: He would have to work eight hours a day.

ALJ: That's all the questions I have. Counsel, do you have any?

Claimant's Attorney: I don't think so, Judge.

During the hearing, ALJ Swartz posed and then continued to limit the hypothetical, which is supposed to mirror the claimant's condition, until the VE testified there were no jobs the claimant could perform. Further, all hypotheticals presented to VEs that the ALJ eventually relies on to award benefits are supposed to be supported by the claimant's medical records, but no medical record supported the ALJ's hypothetical that the claimant needed to nap during the day. During the hearing, the ALJ asked the claimant whether he took naps during the day. The claimant responded:

> Oh, yeah. Yeah, I, some days, you know, I might take a nap for a hour or something, you know, it, you know, I do that if, like if I don't sleep good at the night or something, it hits me during the day. If I can get comfortable, I'll take a nap, you know?

This testimony does not indicate that the claimant needed regular or lengthy naps during the workday. Nonetheless, the ALJ used this testimony, with no supporting medical records or evidence, to narrow the hypothetical posed to the VE in such a way that the VE testified that no jobs existed the claimant could perform.

ALJ Swartz ruled fully favorable for SSDI in a decision dated April 24, 2008, which was written by a staff attorney. In the decision, Judge Swartz selectively cited the testimony of the VE: "The vocational expert testified that claimant's past relevant work as a [job title withheld], a skilled job performed at the heavy level of exertion, provides no skills that are transferable to sedentary work." He also wrote: "Limitations imposed by back disorder preclude performance of even sedentary work on a regular and continuing basis…. Considering the claimant's limitations, he cannot make an adjustment to any work that exists in significant numbers in the national economy…. The claimant's

description of his limitations is consistent with the medical evidence of record, and his testimony is credible."

Alabama Case 69. In this case, ALJ Vincent Intoccia approved SSDI and SSI benefits for a woman based on "arthritis; obesity; hypertension; GERD [acid reflux]; asthma; degenerative disc disease L4-L5; spinal stenosis; and glaucoma." Her initial claims for benefits had been denied, because DDS determined she lacked sufficient medical evidence and had too many resources to qualify for SSI. She was ultimately awarded benefits under both the SSI and SSDI programs, however, based in part upon a pain assessment from her doctor that arrived hours prior to the start of her ALJ hearing. At the hearing, Judge Intoccia presented the pain form to the medical expert (ME) and vocational expert (VE) present at the hearing, neither of whom had a prior opportunity to review it, and then announced a fully favorable decision from the bench.

In August 2008, the 59 year-old claimant filed for SSDI benefits, claiming a disability that began on August 15, 2007. In its Notice of Disapproved Claim on September 26, 2008, the DDS examiner wrote:

> We have determined that your condition is not severe enough to keep you from working. We considered the medical and other information, your age, education, training, and work experience in determining how your condition affects your ability to work.
>
> You state that you are disabled because of high blood pressure, a bad back, arthritis in your knees and hand, acid reflux, eye problems, and chest pain. The evidence shows that you have some restrictions. Your restrictions prevent you from performing your past work as a [JOB TITLE WITHHELD] as you describe this work. However, your restrictions do not preclude you from performing that type of work as it is normally performed in the national economy.

In reviewing the available medical records, the examiner noted how the claimant's own description of her "activities of daily living" revealed "mod[erate] limitations due to pain and requires some assistance; however, [signs or symptoms] appears to be partially consistent w/ findings" that the claim should be denied.

The claimant's file contained conflicting evidence regarding the severity of her medical conditions. Among the various records SSA reviewed before denying the case at the DDS level were at least 10 notes from her doctor stating the claimant would be absent from work for medical reasons on certain days between 2005 and 2007. In each case she was

cleared to return to work. According to one note from her doctor, she sustained, "multiple injuries connected with job fall on 12-21-06," but was allowed to return to work on February 12, 2007.

On July 18, 2007, the claimant experienced chest and body pain, and was admitted to the hospital for two days, forcing her to miss work. Doctors ruled out a heart attack and discharged her, but diagnosed her with, "Uncontrolled hypertension" and "Arthritis," while also noting her condition had "improved." In August 2008, the month she filed for disability, medical records show the claimant complained of hand pain, but her other medical conditions appear to have improved, with medical records indicating her lumbar spine had returned to normal, she had only mild stenosis (a narrowing of blood vessels), and an ankle injury had healed.

In September 2008, the claimant was examined at a family medical center regarding her application for disability benefits. The report concluded: "She can perform all activities without assistance. She needs to have some physiotherapy for lower back problems as well as wrist and knee problems." There was no mention of complications from glaucoma or problems with her sight.

Following SSA's initial denial of both claims, the woman hired an attorney on October 10, 2008, and appealed the same day requesting a hearing before an administrative law judge, noting that she would submit additional evidence into the record. The key piece of new evidence was submitted on January 6, 2010, the day before her hearing with Judge Intoccia. It was a one-page form titled "Clinical Assessment of Pain," filled out by her doctor at the request of the attorney.

The form contained four questions, each listing options for the doctor to circle. The first three listed four possible options, labeled A through D, with A indicating pain that was insignificant and D indicating pain that was severe. For the first two questions, the doctor placed a mark between the C and D options, indicating that the claimant's level of pain was between "distracting" and "virtually incapacitating." In the third question, about whether any medications would produce side effects limiting work, the doctor circled C, indicating the patient could experience limitations due to "distraction, inattention, drowsiness, etc." The form provided no other information about the source of the pain.[52]

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[52] In the Subcommittee's interview with Roanoke, Virginia Hearing Office Chief Administrative Law Judge Thomas Erwin, he indicated this form was originally created by one of the disability attorneys that frequently appears before ALJs in the office representing claimants. Other claimant representatives were now utilizing this form to provide proof of a claimant's pain.

After calling the hearing to begin at 8:44 a.m. the following morning, on January 7, Judge Intoccia entered the "pain assessment" form from the claimant's doctor into the record. After directing questions to the claimant, Judge Intoccia asked the vocational expert (VE) a single hypothetical that involved the new piece of evidence:

> Let's assume a hypothetical individual, same vocational profile as during the period at issue. Let's assume that such an individual could perform a full range of sedentary work activity and then let's superimpose on top of that the pain assessment by Dr. [] otherwise set forth at Exhibit 5F, dated 1/6/2010. If we superimpose those non-exertional limitations by the pain on top of the full range of sedentary work activity, could someone under those facts and circumstances go back to any of those three jobs or any other jobs?

The VE replied, "No, sir, neither."

The judge then turned to the medical expert present for an evaluation of the doctor's "pain assessment." The medical expert explained that the pain assessment from the day before showed the claimant, who was present for the hearing, had pain that was "intractable and virtually incapacitating." The medical expert interpreted the assessment as yielding a more severe diagnosis even than the claimant's doctor that indicated:

> Well, on [claimant doctor's] pain assessment he, on the first and second factor he gave a, a C and a D. D says pain is present and found to be intractable and virtually inc[ap]acitating to the individual. On the, the second factor he also listed a C and a D. D says the increase of pain to such an extent that bed rest and/or a medication is necessary upon physical activity. And then the third factor, he indicated a, a C evaluation. To what extent will side effects impact upon the ability? The drug side effects can be expected to be severe and to limit effectiveness due to distraction, inattention, and drowsiness, etcetera. So that would preclude employment.

It appears the medical expert mischaracterized what the document said. While he noted that the doctor circled both the C and D options on the form for the first two questions, he only explained the more extreme pain description found in D. In reality, the doctor had clearly placed a mark *between* the two options, seemingly in an attempt to split the difference, although he did not provide any written explanation of what he meant. The meaning of the document was also ambiguous because it

was little more than a basic questionnaire containing no original analysis from the treating physician. Had the evidence not been created, submitted, and analyzed in less than 24 hours, it might have allowed more opportunity for the medical and vocational experts to review it and contact the doctor for an explanation, leading to a more informed, and perhaps different conclusion.

At the hearing, however, after receiving the medical and vocational expert testimony, ALJ Intoccia immediately concluded the proceedings by announcing, "after review of the available evidence of record it appears that a wholly favorable Bench Decision can be issued in this particular claim." In a bench decision the judge announces his decision at the hearing in the presence of the claimant, which is followed typically by a brief written statement sent in the mail. His bench decision concluded the claimant met vocational listing 201.06, which he "based on VE testimony." Listing 201.06 finds someone is disabled if they are "limited to sedentary work" for a severe impairment, but also are past the age of 55 and do not have "transferable" skills.

Oklahoma Case 105. Judge Wayne Falkenstein awarded SSDI and SSI benefits to a man alleging chronic knee pain based on knee surgery that occurred in 1984, shoulder pain, coronary artery disease, and obesity. During a brief ALJ hearing, the claimant was not asked a single medical question about his ailments, and the attorney told the judge several times that he was unsure the medical evidence was sufficient to qualify for disability. Yet, using a hypothetical scenario discussed with the medical expert and a vocational expert, the judge found the claimant disabled under the agency's Medical-Vocational Rules.

Medical Evidence of Record. The claimant's sparse medical records consisted only of notes from a hospital visit on August 5, 2006, and a 2007 consultative examination performed at the request of DDS following his application.

Notes from the 2006 hospital visit described the claimant as "a 49 [year] old who complains of chronic left knee [following] surgery in 1984 and right shoulder pain, no [history] of injury." The claimant stated that he used no over-the-counter medications for his pain, but was prescribed Naproxen, if needed, for pain relief. The physician noted that the claimant's "left knee without inflammation or deformity, no effusion + good ligament stability, scar consistent with [history]. Right shoulder +TTP, no deformity noted. Decrease [range of motion]."

The physician's findings in the consultative exam performed in March 2007, with regard to the claimant's allegations of knee and shoulder pain, noted:

> The patient is able to walk without an artificial device. The patient's gait is normal, safe, and stable. The patient can do heel walking normally. Toe walking is weak. Straight-leg raise test is negative on both sides .... Motor strength is 5/5 in the quadriceps and hamstrings. Dorsiflexion and plantar flexion of the feet are in the normal range. Cervical spine with flexion, extension, lateral flexion and rotation is within normal limits. Dorsolumbar flexion, extension and lateral flexion is decreased associated with pain and stiffness. Hip joints with internal rotation, external rotation, abduction, adduction, forward flexion and backward flexion are within normal limits associated with some stiffness without any significant pain. Knee joints with flexion and extension are within normal limits bilaterally.
>
> There is pain and stiffness on the left side, only stiffness on the right side .... Shoulder joints with forward elevation, abduction, adduction, external rotation and internal rotations are within normal limits bilaterally.... By palpation, none of the joints are tender. There is no swelling or erythema noted in any of the joints.

Initial Application. The claimant submitted his initial application for benefits on July 9, 2007. DDS reviewed the claimant's application for both SSDI and SSI based on diagnoses of "osteoarthrosis and allied disorders" and "disorders of back discogenic and degenerative."

DDS denied the claim at initial application on September 10, 2007, and explained:

> The claimant is a 50 year old male with a 12th grade education. He alleges knee and back pain. The claimant's impairments have been determined to be non-severe in nature. His consultative examination revealed that he has full range of motion in both upper and lower extremities. He is [status post] arthroscopic surgery from 1984, with no inflammation or effusion. Right shoulder had TTP, decreased [range of motion] with abduction. [Activities of daily living] are not limited to pain.

The claim was again denied on November, 13, 2007 after reconsideration, which explained its decision by noting: "He has no recent [testing]. He is on no med[ication]s, according to his 3373. He has no recent [doctor] visits.... He drives, shops in

stores, cooks 3 meals per day. After review of the medical evidence, this case appears non-severe."

ALJ Hearing. On February 11, 2009, nearly two years after the date of his last known medical appointment, the claimant appeared for a hearing before Judge Falkenstein. In the interim period, no new medical evidence of the claimant's condition was provided.

At the start of the 12-minute hearing, Judge Falkenstein asked the claimant's attorney, "what's your theory on how you're going to win." The claimant's attorney responded:

> [W]ell, that's a good question, Your Honor. I don't, I don't know if, if the, you know, if you feel that an orthopedic evaluation would, would help. Or I know that's not, you know, necessarily, you know, your duty of that *but I know we are really lacking in the medical* [emphasis added].

The Judge immediately turned to the medical expert present at the hearing, who opined: "[T]here's nothing here that I can marshal that would meet or equal a listed impairment." The ALJ then questioned the vocational expert regarding available jobs for the claimant. The VE found, under the limitations expressed by the judge, the claimant had no skills that were transferrable to the type of work the claimant could perform. With regard to the type of work the claimant previously performed, the VE found that "jobs utilizing transferable skills would not be appropriate." The VE went on to say "in looking at unskilled work [the hypothetical person based on the claimant's alleged limitations] suggests a full range of sedentary work and a reduced range of light, unskilled work." The VE went on to agree with the ALJ that "there are no skills transferrable to sedentary" work.

The judge then asked the claimant's attorney "how do you think you stand?" The attorney replied

> ATTY: [W]ell, your honor, I know the medical, you know, evidence is, is weak, you know. It's, may not even support a medically determinable, determinable problem. I know that – well, it's, you know, it's old, what, I think, oh, a couple of years since he's been there and had any treatment and –
>
> ALJ: Record closed.

The transcript shows that the ALJ interrupted the attorney, closed the record, and awarded benefits.

In his decision, issued on March 4, 2009, the ALJ wrote: "[T]he claimant has the following severe impairment(s): degenerative joint disease, status post left knee surgery, coronary artery disease, and obesity." No medical evidence in the record mentioned degenerative joint disease and the only reference to coronary artery disease called it "mild coronary artery disease without significant symptoms" rather than "severe."

To support his decision, the Judge cited the testimony of the medical expert to determine the claimant could only perform sedentary work and wrote that "the vocational expert at the hearing stated [the claimant's] capabilities *essentially* limited the claimant to sedentary work. [emphasis added]." The judge concluded: "[C]onsidering the claimant's age, education and work experience, a finding of 'disabled' is directed by Medical-Vocational Rule 201.14," or the vocational grid. Essentially, in this case, the judge cited the medical and vocational expert testimony to justify a decision that had virtually no medical support in the case file.

Oklahoma Case 104. In this case, Judge Lance Hiltbrand awarded SSI benefits to a claimant based on "deafness in both ears, degenerative joint disease of the right hip, degenerative disc disease of the cervice and lumbar spine, bilateral carpal tunnel and hypertension." In his opinion explaining the decision, he put significant weight on the testimony of a vocational expert at his hearing. The hearing transcript discloses, however, that the judge asked the VE only one question, based upon a hypothetical situation that was not supported by the medical evidence. The VE, who is not trained or expected to ensure that a hypothetical matches the circumstances of the actual claimant, opined under the hypothetical scenario given that the person would be unable to perform work.

On April 4, 2008, the claimant filed for SSDI and SSI benefits, alleging that her disability began at various times between 1999 and 2003. At the ALJ hearing, she asked that her onset date be amended to the date of her application – April 4, 2008 – due to a lack of medical evidence prior to 2008. Because she was not insured for SSDI benefits through that new date, however, she was, technically, not eligible for SSDI benefits.

Prior to reaching the ALJ level, however, both the SSDI and SSI claims were denied by DDS on August 1, 2008, due to insufficient medical evidence. In the SSI denial, the agency explained, "We have determined that your condition is not severe enough to keep you from working." While the claimant suffered a degree of deafness, it began when she was a child and had not prevented her from working. The SSDI denial concluded, "your condition was not disabling." In its Explanation of

Determination, DDS wrote that the claimant, "has a RFC for a wide range of light work with limited hearing .... She can communicate with coworkers and supervisors .... Vocational Rule 202.11 directs a decision of not disabled."

On September 17, 2008, the claim was again denied, this time under reconsideration, which DDS explained in the following way:

> We have determined that your condition was not disabling on any date through 3/31/2008, when you were last insured for disability benefits. ... Your arthritis causes you some pain and discomfort; however, you can still move well enough to do some types of work. With hearing aids you can hear well enough to work in jobs that do not require perfect hearing. Medical evidence does not show any impairments which keep you from working.

The claimant, a 54 year-old woman, testified she had moved from California to Oklahoma so her sister could care for her. She explained that her disability required her sister to take complete care of her, and her sister did all the cooking, cleaning, yard work, laundry, driving, shopping, and caring for their dogs. However, in medical records from August 26, 2008, she told her doctor she: "Moved to Oklahoma 8 m[onths] ago to take care of her mother who had a stroke." Her SSA Form 3368, dated April 4, 2008, filled out by disability claimants, also explained that, "I stopped working because I came to OKC. And the pain."

The claimant also alleged disabling hearing loss. However, in doctor notes from May 20, 2008, the physician noted that the claimant had some hearing ability: "The patient states that she was born deaf but states that she reads lips very well; however, throughout the examination I noticed on multiple occasions that she seems to hear me without looking at my face, but when we are further away from each other she does have a significant amount of difficulty hearing me and I have to repeat myself on several occasions."

DDS sent her for a hearing test and the resulting consultative exam record from July 17, 2008, stated she had worn hearing aids since the age of 21 due to hearing loss beginning at age five. The consultative examiner found her "hearing aid on the right is non functional" and "her present hearing aid on the left is approximately eight or nine years old" and "was not functioning real well." He used a stock hearing aid from the office and put it into her right ear, observing, "You will notice that she got much better function from her stock aid on the right than with

her own hearing on the left." The examiner concluded, "She basically needs new binaural hearing aids."

Judge Hiltbrand held a hearing for the claimant on August 18, 2009, at which the claimant asked that her disability onset date be amended to April 4, 2008, the date of her application. Her attorney explained to the judge, "As you can see from the record, we don't have any medical going back." Judge Hiltbrand responded, "Okay. So, we're looking at basically from May the 21st 2008 to the present ...."

During the hearing, the woman explained that when she was working in 2005, she stopped working because she, "stepped off the back of a ladder and whatever I did, I really didn't hurt myself, but I guess I did because after my hip really started hurting a lot and my back. And so – and I really – I wanted to leave California and come back to Oklahoma and live with my family. So, I quit [the job] and moved back to Oklahoma." The judge asked if she received workers compensation for the fall, but she responded, "I never even went to the hospital, the doctor."

She continued to explain to the judge that she was currently living with her sister, who "just recently got on" Social Security Disability as well. Her sister, she said, took care of her to such an extent that she even had to help her dress in the morning, including pulling up her pants. When the judge questioned how the sister could do this with her disability, the woman responded, "You know she's dealing with hers quite well." She added that her sister did her laundry and was the "worker in the house."

In his September 9, 2009, fully favorable decision, ALJ Hiltbrand disagreed with the DDS determination regarding Vocational Rule 202.11, which should find the claimant "not disabled." He based his disagreement on the testimony of the vocational expert at the hearing. The testimony of the vocational expert, however, was based on a hypothetical created by the judge that was not based on evidence in the medical record. In the hypothetical, the judge described the claimant's various conditions, but added the assumption the claimant would experience "a mild to severe level of fatigue and discomfort affecting her ability to work in a competitive environment." This fatigue symptom was not mentioned or supported in the available medical evidence in the case file.

Moreover, in the same July 2008 document generated by a DDS doctor used by the judge to identify and support restrictions on the claimant's ability to lift, sit and stand, a separate section called "Postural Limitations," contained no limitations on the ability of the claimant to engage in a variety of physical activities. This section provided options

for a DDS physician to identify any limitations with respect to climbing, balancing, stooping, kneeling, crouching, or crawling. When presented with the option for each activity to select whether the limitations were a factor "frequently," "occasionally" or "never" – the examiner chose "None established." The document did not refer to any issues involving fatigue or discomfort.

During the hearing, Judge Hiltbrand offered the following hypothetical to the vocational expert to analyze:

> ALJ: Assume a hypothetical the same education and work experience as that of the claimant has the following exertional and nonexertional limitations, which I will give you at this time. This hypothetical individual can occasionally lift and carry objects no more than 20 pounds, frequently lift or carry objects up to 10 pounds, stand and/or walk at normal pace, six hours in an eight-hour workday and sit with no breaks for a total of six hours in an eight-hour workday. **As to all postural limitations as to climbing, balancing, kneeling, crouching and crawling, all those are going to occasional.** She is going to have limited hearing. She should avoid loud background noises. She may have difficulty hearing, dealing with the general public, or working on the telephone or dealing with people on the telephone. As to environmental limitations as to any loud noises, avoid concentrate exposure and experiences a **mild to severe level of fatigue** and discomfort affecting her ability to work in a competitive environment. Based on-these exertional, non-exertional limitations can this hypothetical individual perform any of her past relevant work as she previously performed it or how it shall be performed in the national and national economy, please? [emphasis added]
>
> VE: No, Your Honor.
>
> ALJ: Okay. Any other work?
>
> VE: No, Your Honor.

The judge based his decision to award benefits in large part on the VE's testimony. His opinion did not address the contradictory medical evidence in the record or perform a credibility analysis of the claimant's testimony.

Moreover, the judge did not address the credibility of her testimony that her disabled sister was capable of meeting all of the claimant's physical needs, including dressing and feeding her. Finally, he found her disabled beginning in April 2008, despite the fact that he mentioned during the hearing that the relevant medical records were dated from May 2008, the following month.

B. Questionable Hearing Conduct and Use of Hearing Evidence

Administrative Law Judges determine some of the most challenging disability cases that come before the Social Security Administration. By the time a case reaches an ALJ, claimants have already been denied benefits, in most states twice. Hearings provide an opportunity for claimants to make their case personally before an impartial judge. They also allow the judge to get answers to questions about potentially lacking or conflicting evidence, whether a claimant is credible, or whether a condition has worsened.

Similar to other judicial venues, the ALJ hearing is not simply an informal meeting between the agency and a claimant. Rather, hearings are intended to be run as judicial proceedings that allow claimants the opportunity for due process and for the judge to obtain all relevant facts. SSA guidelines are clear: "The ALJ must inquire fully into all matters at issue and conduct the administrative hearing in a fair and impartial manner."[53]

During an interview, SSA's Chief ALJ, Debra Bice, was adamant about the high standards applicable to the conduct of disability hearings.[54] When asked about how to conduct a good hearing, she reiterated what she described as her constant message to ALJs: "Don't abdicate your role as judge." She said that disability ALJs were responsible to "know the law" and "know your case" well enough to "provide a full and fair hearing." She added that she instructed the judges: "Don't just look at the physician's records and pay a case."

The role of the judge at the hearing, she went on, is to ask questions that present the issues in the case: "Claimants should get a chance to tell

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[53] SSA identifies the elements of a hearing as an introduction; an opening statement; oaths or affirmations; adducing the evidence; receipt of oral testimony; presentation of written or oral argument; and a closing argument. Each of these elements of the hearing is accompanied by detailed procedures. Social Security Administration, HALLEX I-2-6-1. Hearings – General. http://www.ssa.gov/OP_Home/hallex/I-02/I-2-6-1.html.

[54] Subcommittee interview of SSA Chief Administrative Law Judge Debra Bice (8/3/2012).

their story." With few exceptions, a good hearing takes 45 to 60 minutes to conduct, sometimes longer, according to Judge Bice.

Asked about extremely short hearings, Judge Bice responded that there are "serious problems with a three minute hearing." She indicated that short hearings can erase the appearance, if not the reality, of a process that is independent and impartial, making them look instead like stagecraft. Moreover, she added, "If a claimant doesn't speak, that's not a hearing."

The chief judge spoke even more strongly about the problem of judges having off-the-record conversations with claimant representatives, calling it a matter of ethics. While making provision for the way judges and representatives can develop friendly relationships after years of seeing each other on a regular basis, she stressed the importance of maintaining professionalism. "My policy is you don't want to talk to a representative anywhere outside of a hearing room. ALJs should not go off the record," explained Judge Bice. In Federal courts, such off-the-record conversations are considered *ex parte* – meaning a conversation between a judge and only one of the parties involved – and a violation of the code of conduct for United States Judges.[55] Despite SSA hearings being set up as "non-adversarial" proceedings involving only a single party, off-the record conversations threaten the impartiality of the ALJ hearing and render the hearing record incomplete.

Chief Judge Bice told the Subcommittee that, at all times, ALJs need to "make sure they are impartial" in fact, while also "presenting impartiality." In particular, she warned that judges and claimant representatives should not meet prior to hearings to talk about cases, a practice she called, "very dangerous." "Very rarely should judges call representatives to talk on the phone" about cases, she explained, insisting that it only take place when there is no other option. Citing an example of something even more off-limits, Judge Bice said judges "shouldn't be having lunch with representatives."

The Subcommittee investigation found that in a significant number of the 300 cases it reviewed, ALJs held hearings that failed to meet the standards laid out for them by agency rules and Chief Judge Bice. Problems included perfunctory hearings that were less than 15 minutes long, including some that lasted only three minutes. In some hearings, the transcript showed that the ALJ did not ask the claimant a single medical question. In others, the ALJ turned over all questioning to the

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[55] *See* United States Courts, Rules and Policies, Codes of Conduct for United States Judges, Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially, and Diligently, http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct/CodeConductUnitedStatesJudges.aspx.

claimant's representative. In those cases, the judge rarely cross-examined the claimant or asked follow-up questions to clarify the answers. In many cases, the judge did not address or resolve issues involving conflicting evidence in the case file. In some cases, the judge issued a decision citing evidence that was either not in the case file or was directly contrary to the records or hearing testimony that did exist. In one instance, a judge appeared to coach a claimant about how to get higher benefits by making his financial condition look worse than it was. Still other hearing transcripts mentioned off-the-record conversations between judges and attorneys that were never explained on the record. The following cases illustrate some of the troubling practices identified during the investigation.

The problem encountered most frequently by the Subcommittee was that of short hearings in which the ALJ failed to properly address the relevant issues. In ***Oklahoma Case 148***, for example, the claimant alleged a disability related to depression and anxiety. On March 21, 2007, she was sent for a mental evaluation to determine whether she met the criteria for medical listing 12.04, related to "affective mood disorders." While the examining doctor found she did have some moderate mental impairments, the claimant's condition was determined to be non-severe and not to have met the listing criteria. After a five-minute hearing on June 16, 2008, however, ALJ Wayne Falkenstein awarded benefits to the woman. The judge opened the hearing by asking the claimant only three questions, each to obtain administrative details about her birthdate, home address, and level of high school education. He then turned to a medical expert, who had not personally examined the claimant, asking for a review of the medical file. The medical expert said the claimant met the medical listing for 12.04, and without further questions the judge closed the hearing.

Oklahoma Case 153 is a case involving a woman who alleged crippling hand pain from carpel tunnel syndrome, yet also worked as a bartender. One doctor found she had "adequate dexterity" with her hands and fingers; another described her as disabled. ALJ Wayne Falkenstein held a 17-minute hearing which failed to address the conflicting medical evidence. Moreover, most of the time in the hearing was spent trying to call a medical expert whom the judge had asked to testify by telephone. After several wrong number attempts, he sent his assistant to find the number. When the correct number was eventually found, the judge spoke briefly with the expert and closed the hearing.

Virginia Case 267, decided by ALJ David B. Daugherty, involved a hearing that lasted only three minutes, from 9:18 a.m. to 9:21 a.m. The claimant alleged back pathology, shoulder arthritis, left knee arthritis,

depression, and anxiety, and was examined on October 21, 2007. A consultant's report from the examination states:

> The number of hours the claimant could be expected to sit, stand and walk will be 4 to 5 hours in an 8-hour workday with normal breaks. The claimant does not require any assistive devices for ambulation. The amount of weight the claimant could lift and carry is 15 to 20 pounds frequently. Slight limitation in bending, stooping, crouching and crawling. No limitations in reaching, handling, fingering or grasping. No other relevant visual, communicative, workplace or environmental limitations.

This and other medical evidence weighing against the claimant was dismissed by ALJ Daugherty. Instead he based his favorable decision on a checklist form filled out by a doctor (Doctor One), apparently at the request of the claimant's attorney. On July 22, 2008, at his three-minute hearing, Judge Daugherty elicited evidence to support Doctor One's characterization of the claimant's limitations and at one point had to remind the claimant that he had seen Doctor One. The following is the hearing testimony in its entirety.

ALJ: Mr. --

CLMT: Yeah.

ALJ: -- my name is David Daugherty and I'll be judge for the hearing. All right, Bill do you have any objections to me admitting the exhibits.

REP: No, Your Honor.

ALJ: Okay, so you would admit all of the exhibits.

ALJ: Now, Mr. [NAME REDACTED], raise your right hand and I'll swear you in. You, too, [VOCATIONAL EXPERT]

ALJ: Mr. [NAME REDACTED], what are your primary health problems; what keeps you from working?

CLMT: I was born with scoliosis; I have pain, anxiety, and depression.

ALJ: High blood pressure?

CLMT: Yes.

ALJ: You have pain every day?

CLMT: Yes.

ALJ: Pain right this minute?

CLMT: Yes.

ALJ: Who's your doctor?

CLMT: [DOCTOR Two] and [Doctor Three].

ALJ: You seeing Doctor One?

CLMT: Yes.

ALJ: Okay, let the record show that I'm trying to find some information (INAUDIBLE).

[VOCATIONAL EXPERT SWORN IN]

ALJ: MR. [NAME REDACTED], as a result of this claimant's impairments (INAUDIBLE) is limited to lifting 10 pounds occasionally, less than 10 pounds frequently; he can stand and/or walk less than three hours a workday; sit less than three hours in a workday; never climb, crouch, crawl or kneel. How does the combination of those limitations affect his ability to work and hold down a full-time job?

VE: (INAUDIBLE).

ALJ: I agree with that. I'm going to write a favorable decision (INAUDIBLE). You may be excused.

ATTY: Thank you, Your Honor.

The differences between the medical evidence in the file and hearing testimony as presented by the judge are difficult to reconcile. The consultant's examination report in the case file states the claimant could lift "15 to 20 pounds frequently," but at the hearing the judge said the claimant could lift "10 pounds occasionally, less than 10 pounds frequently." The consultant's examination report states the claimant could "stand and walk … 4 to 5 hours in an 8-hour workday with normal breaks"; the judge said the claimant could "sit less than three hours in a

workday." The consultant's examination describes a "[s]light limitation in bending, stooping, crouching and crawling," but the judge said the claimant could "never climb, crouch, crawl or kneel." The hearing record and subsequent written opinion contain no explanation for the judge's recitation of facts that contradict the contents of the case file.

Oklahoma Case 151. During another hearing, ALJ Peter Keltch appeared to coach a claimant about how he might increase the amount of his benefit check by saying that he was renting a room from his partner, rather than living there for free. The judge gave this advice before he knew the claimant's living arrangements, raising questions about his impartiality and adherence to program rules in this instance.

In addition, this case raises concerns about how the judge justified awarding SSDI benefits to a claimant who could not establish the onset of his disability during a period in which he was insured. The primary issue needing resolution at the hearing involved whether the claimant's disability onset date occurred prior to the claimant's "date last insured," or DLI. Anyone found to have become disabled after his or her DLI does not qualify for SSDI benefits.[56]

The claimant applied for disability benefits based on symptomatic human immunodeficiency virus (HIV) infection.[57] He alleged a disability onset date of April 15, 2003, nearly two years before his DLI of March 31, 2005. The claimant provided, however, medical records supporting his claim of disability dated no earlier than 2007, two years after his DLI.

DDS Review of Claim. DDS determined that the claimant had failed to prove he was disabled before his DLI. Upon reconsideration of the initial application, DDS sustained the denial and sent the claimant a letter explaining:

> We have determined that your condition was not disabling on any date through 03/31/05, when you were last insured for disability benefits .... [Y]ou said that you were unable to work because of acquired immune deficiency syndrome, joint pain with neuropathy, asthma, allergies, and anxiety. The medical evidence shows the following: Although you

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[56] Someone that does not qualify for SSDI, for example due to a DLI problem, could still qualify for SSI, assuming they meet the resource and disability requirements.

[57] While many individuals with HIV infection have a condition that prevents them from being able to work, an HIV diagnosis alone does not guarantee an award of benefits. As with other impairments, the allegations must meet program requirements. Therefore, individuals with HIV infection who are asymptomatic or who have less severe HIV manifestations, may not meet program requirements to be awarded benefits.

> sometimes had problems with asthma and allergies, you were able to breathe adequately most of the time. While your joint pain and neuropathy caused discomfort, you could still move around and walk well enough to do some types of work. Your anxiety kept you from doing stressful and complex work, but you could do simple, routine work. Although you tested positive for HIV, the medical evidence does not show any other impairments which kept you from working on or before the date you were last insured for disability benefits.

ALJ Review of Insured Status. The hearing transcript shows that ALJ Keltch was well aware of the disability onset issue. In fact, the judge stated:

> I'm showing here the date last insured of March 31, 2005. So, you're not currently insured from Disability. So, you apparently stopped paying in the first quarter in 2000. I don't have any record of any payments in and then that means that your insurance expired March 31st of 2005, which is fine if you are disabled as of the date you said, which was April 15, 2003. So, if you're actually disabled in '03, then you still had coverage. However, if I find that you were not disabled until 2006, '07, '08, '09, sometime later, then you wouldn't have any insurance coverage.

Judge Keltch made clear that he needed to find the claimant disabled prior to March 31, 2005, the claimant's DLI. No medical evidence in the file, however, supported such a finding. Medical evidence from a treating physician stated that the claimant had been "his patient since 2004," but made no mention of disabling health issues dating that far back. The statement by the physician only confirmed the claimant was a patient; it made no mention of a disabling condition. Medical evidence from another doctor stated the doctor saw the claimant five times in six months between October 2008 and February 2009, but those dates were long after the DLI expiration date. While both doctors stated the patient was *currently* disabled, neither doctor provided evidence of disability to support the alleged onset date of 2003.

A medical treatment note dated August 16, 2007, noted that the claimant, a hairdresser, complained he was in such pain that "he cannot even finish one person's haircut." This note was again, after the DLI. It also indicated the claimant was working until at least 2007, which the judge did not ask about during the hearing. Another treatment note dated January 19, 2009, a date that is, again, years past the DLI, reported "his symptoms are improving." One of his doctor's noted, "chronic pain syndrome is nearly controlled at this point."

Despite the lack of medical evidence establishing the disability onset date, Judge Keltch found the claimant disabled beginning April 2003, the claimant's alleged onset date, and well before his DLI, making him eligible for disability benefits. His opinion did not explain the basis for that onset date.

ALJ Coaching of Claimant. A second set of issues involves the judge's conduct during the hearing, when Judge Keltch appeared to coach the claimant on how to secure a higher monthly disability check than he may have been entitled to. The hearing transcript shows how Judge Keltch advised the claimant, who had no income and lived rent-free with his partner, in the following way to receive full benefit checks each month.

Judge Keltch:	Do you have income from any source?
Claimant:	No.
Judge Keltch:	How are you living?
Claimant:	[My roommate] supports me. He buys my medications.
Judge Keltch:	If you get your benefits do you and [your roommate] have an agreement that you're going to pay [your roommate] back some money?
Claimant:	Yes, sir.
Judge Keltch:	I'll tell you and a little secret about that. If you go in, if you're approved and they say now where've you been living and if you say I've been having a free apartment, they say oh well we'll deduct a third off of your benefits because you didn't have any rent to pay. But if you go in and say I've been living with a friend and I'm going to pay him back, then they give you the full check. I mean it's between you and him to pay him back if he's been paying the rent and bills.
Claimant:	Yes, sir.
Judge Keltch:	If you go in there and say well I've just been provided a place to stay and they say oh well for Supplemental Security Benefits then you don't get it, or the check.
Claimant:	Yes, sir.

Judge Keltch: You knew that didn't you (to claimant's attorney)?

Attorney: Yes, sir.

While the claimant and attorney responded affirmatively when Judge Keltch asked if the claimant had an agreement to pay a portion of the rent to his roommate, even the suggestion of the judge to advise the claimant on how to maximize his monthly benefit payments potentially violated the ALJ's obligation to remain impartial.

Oklahoma Case 102. ALJ Ralph L. Wampler awarded SSDI and SSI benefits to a 26 year-old woman who alleged that she was disabled because she had poor reading and spelling skills as well as a learning disorder. The claimant supported her allegations with statements on her application documents, but the case file contained no objective medical evidence to support her claim. Judge Wampler held a three-minute hearing during which he questioned the medical expert regarding whether the claimant met a medical listing 12.05 for mental retardation. In response, the medical expert indicated that the claimant did not meet all of the listing criteria in 12.05(D). Despite this testimony, Judge Wampler ended the hearing, awarded benefits under listing 12.05(C), and wrote that the award was supported by the expert's hearing testimony, even though the expert had not discussed 12.05(C).

Initial Application and Reconsideration. When the claimant first applied for benefits, DDS requested a consultative exam be performed. The evaluator that performed the Mental Residual Functional Capacity examination found the claimant was "markedly limited" in her ability to understand and remember detailed instructions, as well as in her ability to carry out detailed instructions. The evaluator found the claimant "can perform only simple tasks with routine supervision [and] can relate on a superficial work basis."

DDS also had a psychiatric review technique performed. The evaluator found:

> 26 years old alleges poor reading, spelling, developmental delay and learning disorder. No known mental health treatment past or current. CE exam shows verbal scores of 66, performance of 78 and full scale of 69. Claimant retain[s] ability do simple work.

The evaluator noted the claimant had a "12th grade education attended special education throughout school year, alleges poor spelling skills, poor reading, developmental delay and learning disability. No medical sources provided by claimant."

The psychological evaluator met with the claimant and determined:

> Affect and behavior were observed to be fairly talkative, fidgety and serious. She was cooperative with the examiner. Attention was focused. Effort and motivation were good. Results are interpreted as being valid. Observations of adaptive behavior and interpersonal style suggest a level of functioning that is consistent with the obtained IQ score.

The examiner's primary diagnosis was that the claimant had a learning disorder; there were no other diagnoses of note. The examiner noted the claimant had four children and was pregnant with her fifth. He noted the claimant's "medical problems include hypertension .... She is supposed to take medication for hypertension but she doesn't."

The examiner provided no other details as to the claimant's activities of daily living or her social interactions. The examiner noted the claimant "last worked at a call center for less than one week. The job ended because was told she wasn't fit for job." The claimant stated on her disability application forms that she primarily stays home and cares for her four children with the help of her boyfriend.

DDS denied the initial application and request for reconsideration. In the explanation of determination DDS found:

> 26 years old alleges poor reading and spelling skills, developmental and learning disorder. Claimant received a mental [psychiatric review technique form] and a [medical residual functional capacity] assessment for simple work.

The claimant appealed.

ALJ Hearing. At the hearing stage, Judge Wampler held a hearing lasting three minutes. At the hearing, a medical expert testified she had reviewed the medical documents in the file. No medical records were included in this file, however, except the brief CE report and IQ test results of 66, 69, and 78.

The medical expert opined the claimant generally met the criteria of Listing 12.05, the listing for mental retardation. A claimant meets the criteria of this listing if they meet any one of four tests, labeled A through D. Under 12.05(D), a claimant meets the requirements if a single test shows they have an IQ between 60 and 70 resulting in at least two of the following: (1) marked restriction of activities of daily living; (2) marked difficulties in maintaining social functioning; (3) marked

difficulties in maintaining concentration, persistence, or pace; or (4) repeated episodes of decompensation, each of extended duration.[58]

The medical expert testified that the claimant generally met the 12.05 listing, but under questioning from the judge was able to identify a "marked" limitation in only one instead of the listed areas.

Judge: What do[es the medical record] show the claimant suffers from?

ME: This individual has a diagnosis of mild mental retardation and a diagnosis of a learning disorder. It's my opinion that she meets 12.05.

Judge: 12.05. Okay. Now, can you address the B criteria?

ME: Yes, your honor. In restrictions of daily, daily living activities, I believe there's a mild restriction.

Judge: Uh-huh.

ME: In maintaining social function, I believe there is a moderate limitation.

Judge: Uh-huh.

ME: In maintaining concentration, persistence, or pace, there's a marked to extreme restriction.

Judge: Okay. And then episodes of deterioration?

ME: I don't have – Your Honor, she's living in a pretty restricted environment –

Judge: Uh-huh.

ME: – and, not doing things that are, are causing these to occur and don't have any – I have very limited documentation, actually, but I don't have documentation.

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[58] Social Security Administration, Medical Listing 12.05(D), http://www.ssa.gov/disability/professionals/bluebook/12.00-MentalDisorders-Adult.htm#12_05.

Judge: Okay.

ME: So, I'd just say I don't have enough information.

The medical expert's testimony established a marked limitation in only one area, maintaining concentration, persistence, or pace. After a question regarding the duration of the claimant's alleged impairment, Judge Wampler stated that he didn't "see a need to of going any further," and ended the hearing.

In his written opinion, Judge Wampler stated that he was awarding benefits to the claimant based on listing 12.05(C), which has different criteria and was not even referenced during the three-minute hearing. His opinion cited the medical expert as having testified that the claimant met the requirements of "12.05(C)," even though she had testified about 12.05(D) and did not find that the claimant met the criteria in that listing. While the claimant may well have met the requirements of the 12.05(C) listing and should have received benefits, the judge incorrectly cited the hearing testimony as support for his finding.

Alabama Case 73. In 2010, ALJ Frederick McGrath awarded SSDI benefits to a 49 year-old veteran for "disorders of the back and chronic headaches." Judge McGrath's decision finding the claimant disabled relied in part on a perfunctory eight-minute hearing that took place by video instead of in person and in which the judge spoke only to the attorney, without eliciting testimony from the claimant. The claimant's case file contained a number of conflicting medical records, some showing a possible disability and others showing he could work. During the hearing, Judge McGrath did not discuss any of the conflicting evidence regarding his disability, asking only for an opening statement from his attorney.

A review of the records shows the claimant had a history of painful headaches, though the same records also show he worked despite them for several decades. Complicating the case, his long-term use of prescription drugs for the headaches led doctors to raise concerns that he overused certain medicines – which one said worsened his condition – and that he may have been "drug seeking." And while he claimed that low back pain kept him from working, a consultative exam more than a year after his alleged onset date determined he could do "light work."

His claim for SSDI was denied on October 15, 2009, because DDS found his medical records showed he was still capable of work:

> You state you are disabled because of degenerative disc disease and chronic headaches. The evidence shows you

> have some restrictions and are not able to perform work that you have done in the past. However, based on your age, education and past work experience, you are still able to perform certain types of work.

On December 14, 2009, the claimant appealed the denial and requested a hearing with an ALJ.

Medical and Work History. The claimant's medical records showed that he had struggled with depression since 1982 and with headaches "since he was 15," but also worked for more than three decades with these same conditions. A review of the records he supplied to SSA show that he complained also of back pain, but that he was never kept from working for extended periods of time.

Records covering the period 2007 to 2009 indicate that the claimant worked off and on at various jobs, despite severe headaches. On August 17, 2007, the claimant underwent a neurological exam for his headaches, at which the doctor wrote: "[O]ver the years he has self medicated with over the counter remedies including Goody Powders, etc. He reports that for the past 15 years he estimates he has taken Goody Powders on a daily basis – he can take up to 6 to 18 per day." Regarding the frequent headaches, he wrote: "Certainly, medication overuse has been a contributing factor."

During a clinic visit the following week, again for headaches, the claimant became agitated when he did not receive the prescription he wanted, which the doctor attributed to him being "drug seeking":

> "He was recommended to taper off BC aspirin powders. [Another doctor] recommended using Lortab for his headache and handed him a prescription of Topamax. Patient states that Topamax prescription *has* not been beneficial and that in fact has caused him numbness to right lower extremity. Patient grabbed prescription bottle and threw it across the room into the trash can. Patient missed trash can and then got up and threw it again in the trash can. …
>
> I personally feel that this patient is drug seeking and I did not feel comfortable with this patient in the room throwing his prescription across the room and into trash can. Patient left office visit extremely frustrated …."

Notes from October 12, 2007, showed the claimant continuing to work, which he explained was possible because of a Valium prescription. His doctor recommended lowering the dose, but noted how the claimant

resisted: "[H]e is now working in Jacksonville Florida. He is trying to find jobs here and there, but he always comes back home to Selma.... He reports that as long as he takes [his] medications, his pain is relatively well controlled.... We were discussing last time maybe the possibility of decreasing the Valium to one a day, but he reports that since he has to be traveling so much to work, he feels that the Valium will need to be kept at the same dosage."

A medical progress note from May 8, 2008, reported the patient complained of back pain, but that, "He was laid off his job so he is basically not lifting or carrying anything heavy." Another medical note over a year later, from October 12, 2009, stated: "Currently he is in so much pain that he cannot do a good job at keeping up with his work so he quit his job last year and is pursuing on disability benefits."

Numerous records from the Veterans Administration noted the claimant also struggled with cocaine addiction. One from November 21, 2008, recorded how, "[Patient] denies cocaine use, but is on VA papers." On February 6, March 24, May 19, 24 and September 28, 2009, medical progress notes state that an "active problem" was "cocaine depend[ence]."

On May 22, 2009, the patient visited the VA for an evaluation of his "ambulatory status," which would later be a central piece of evidence discussed in the short hearing. While the evaluation was described by the claimant's attorney during the hearing as containing a "prescription" for a walker, the notes show it was the claimant who requested it: "Patient arrived clinic ambulatory without assistive device.... Prosthetics service issued the claimant a dolomite Four Wheel Rollator, as requested."

Following his application for disability, the claimant underwent a consultative exam at the request of DDS on October 12, 2009. The examining doctor found he "walks [with] obvious pain, limps both ways but tolerates it well." The doctor also noted the claimant "would definitely benefit using a walker to help [with] balance as well as ease [with] walking."

On October 15, 2009, another DDS consultative examiner reviewed the claimant's records and called the findings into question, saying his "statements about his allegations are partially credible." This examiner found that the claimant could perform in the "light work range," or several degrees of difficulty more than the "less than sedentary" range of work. Also according to this examiner, the applicable vocational rule in this case was 202.21, which provided a determination of "not disabled."

Perfunctory Video Hearing. On August 13, 2010, ALJ Frederick McGrath held an eight-minute video hearing in which he indicated to the claimant he would rule favorably. During the brief hearing, the judge did not ask a single question of the claimant, and only asked the attorney for an opening statement. The hearing left a number of issues unresolved, including: (1) how to handle records giving conflicting accounts of cocaine and barbiturate abuse; (2) whether the claimant was fired from his job or quit because of his disability; and (3) how to handle the October 2009 consultative exam which found him fit for light work and not disabled.

ALJ McGrath opened the hearing by saying, "I note you're going to be using a walker today and I note that for the record. I'm going to speak to your attorney for a few minutes." He then turned to the claimant's attorney for an opening statement. The attorney responded: "Thank you, Your Honor. We submit that this gentleman is unable to work on a competitive basis due to the pain in his low back, some in his neck and of course his chronic headaches. The walker that you mentioned was prescribed by the VA on May 22 of '09…." He added the claimant "just contacted us a couple of weeks ago, and so we haven't had time to further develop the case, but if need be I'll certainly obtain those records."

Judge McGrath responded; "[I]f he can't meet the full range of sedentary work I'm going to find him disabled. You'll get a decision. Any additional records you have available you need to barcode in just so that he has a complete record. That concludes the hearing."

On September 14, 2010, ALJ McGrath issued a fully favorable decision, finding the claimant disabled for "disorders of the back and chronic headaches." As in the hearing, the decision did not discuss any of the unresolved issues or conflicting evidence, as required by program rules. Among his findings of fact was that the claimant "has the residual functional capacity to perform a limited range of sedentary unskilled work," based in part on the use of a walker and because he "is illiterate."

Judge McGrath's finding of illiteracy was not, however, supported by the evidence, and even contradicted what little evidence on this issue was in the file. The only reference to the claimant's literacy was in a consultative exam on August 4, 2009, in which the examiner found he had no difficulty with reading.

Alabama Case 72. In 2010, ALJ David Horton awarded SSI child benefits to a teenage girl a month before her 18th birthday, concluding

she had several "severe impairments," including "morbid obesity; severe degenerative disc disease; diabetes mellitus; and chronic anemia."

At a 17-minute hearing, Judge Horton explained that he would hold a shorter hearing than usual because he wanted to get a decision out quickly. He noted that if the decision were issued after her 18th birthday, the claimant would also be required to undergo evaluation as an adult. Under SSA program rules, this evaluation would require the agency to consider whether as an adult she was able to work. Children, in contrast, are not required to be evaluated on their ability to work, but only on whether they have "marked" limitations in two of six "domains of functioning."

In this case, the doctors and examiners who evaluated the claimant did not find marked limitations in two domains. ALJ Horton determined, however, that she had marked limitations in: (1) moving about and manipulating objects, and (2) health and physical well-being, and awarded her SSI benefits. In his fully favorable decision, Judge Horton relied on the claimant's brief hearing testimony to make these findings. His opinion did not address conflicting information in the case file; in particular, two key pieces of evidence that specifically addressed the child's abilities in each of the six domains of functioning and concluded she had mild limitations, but was not disabled.

One of these records came from her teacher. A March 5, 2009 assessment from the claimant's 11th grade English teacher found the child not only had few limitations, but was succeeding in school. The teacher, who taught the claimant 1.5 hours each day, completed a detailed questionnaire at the request of the agency, describing the child's capacity in all six "domains." In the two areas found by Judge Horton to have "marked" limitations – "Moving about and manipulating objects" as well as "Health and physical well-being" – the teacher reported for the first "no problems observed in this domain; functioning appears age-appropriate" and for the second, "[n]one of which I am aware." The teacher even went on to write:

> Prior to this survey, I had no indication that there was any problem with this student. Compared with the "general" population of our school, this child's behavior is far preferred to that of most students her age.

The ALJ opinion does not address this evidence.

The second key record is a consultative examination performed at the request of the agency. On March 17, 2009, the consultative examiner for the agency found marked limitations for the claimant in only one

domain of functioning, "Moving about and manipulating objects." In the domain of "Health and physical well being," the CE determined the child's limitations to be "Less than marked." The ALJ dismissed the CE's opinion, however, writing later in his decision:

> The State agency medical consultant's assessment regarding health and well being is given little weight because evidence received at the hearing level shows that the claimant is more limited in this domain that than determined by the State agency consultant. Furthermore, the State agency consultant did not adequately consider the combined effect of the claimant's impairments.

During the hearing, though, ALJ Horton asked the claimant only to confirm facts already in the medical record, drawing out no new information. He began the hearing announcing that he had read the materials in the record so that there was little need for a normal-length hearing:

> Okay. I'm going to try to keep the testimony fairly short this morning because I reviewed the medical evidence pretty thoroughly in here. I'm just going to kind of ask you some questions about your treatment. I normally like to get testimony from just one person at a time, but in this particular case, since again I think the medical evidence kind of speaks most of what's here, if at some time you need to chime in, [Claimant] it's okay, but normally I don't allow that, but in this particular case, again, just because I think the medical evidence is what it is, I just want to verify some things in here in the quickest way we can get it in there.

His remarks contain no indication that the file contained conflicting information regarding her disability, nor does the judge examine that issue during the hearing.

The ALJ hearing concluded after 17 minutes, and the judge issued a decision two days later – unusually fast compared with other agency decision times. Before adjourning, he explained why he was issuing the decision so quickly:

> Okay. Both what I'm going to do in a case like this because again I pretty well reviewed the medical record is I'm going to review it one more time, issue a decision in this case. We're going to try to get that decision out fairly quickly since your daughter is going to turn 18 here next month. But it sometimes takes a little while to get out in the mail and get to

> you and so forth, but you will get a decision in the next few months based on everything that I see in the record.
>
> And if you should be awarded benefits, one of the things you may want to make sure is to take care of any medical needs as quickly as possible because should she be awarded benefits there'll be an age 18 redetermination coming up very quickly. So just keep that in the back of your mind about medical treatment and so forth. But anyway, I appreciate you all coming out today and giving me your testimony. I hope you get doing better because you're awfully young to have such severe problems, so again I hope things get going better for you, but appreciate it.

By moving so quickly and disregarding the conflicting evidence in the case file, the judge enabled the claimant to obtain SSI benefits under criteria designed for children and avoid having to be evaluated under adult criteria, as required for all claimants 18 years of age and older.

C. Improper Application of Medical Listings

As noted above, in many cases, SSA issues disability benefits based upon finding a "medical allowance" at step three of the five-step disability analysis. Making an award of disability benefits at step three of the sequential process and finding the claimant meets a medical listing requires an exact and object level of proof. This is the only step in the process where benefits can be awarded solely on the basis of medical factors. If an individual is not working and provides proof of one of the listed impairments, or an impairment of equal severity, the agency will award disability benefits without considering vocational factors (i.e., the claimant's age, education, or previous work history).[59]

To be found disabled at step three, a claimant must meet the criteria for at least one illness on a "Listing of Impairments," developed by SSA. The Listing of Impairments is broken down into 14 body systems. For each "listing," SSA specifies very specific medical criteria that must be met before a claimant is deemed to "meet a listing" and qualify for disability benefits. SSA developed these medical listings and more importantly, their required elements, to insure disability payments are only made for particular conditions under particular circumstances. The Listings are also intended to promote national uniformity and consistency at all adjudicative levels.[60]

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[59] Social Security Advisory Board, Aspects of Disability Decision Making: Data and Materials, February 2012, http://www.ssab.gov/Publications/Disability/GPO_Chartbook_FINAL_06122012.pdf.
[60] Id.

Since the 1990s, the Government Accountability Office (GAO), the SSA Office of Inspector General, and Social Security Advisory Board "have expressed concerns that the medical listings being used [by SSA] no longer provide current and relevant criteria to evaluate disability applicants' inability to work."[61] In fact, in 2003, GAO placed SSA's disability programs on the high-risk list "in part because their programs continue to emphasize medical conditions in assessing work capacity, without adequate consideration of work opportunities afforded by advances in medicine, technology, and changes in the labor market."[62] In July 2012, GAO noted that SSA has made some progress in updating the medical listings for eight of the 14 body system medical listings. The agency continues to experience delays, however, with the remaining six body systems. GAO also noted that two of the six remaining body system listings to be updated were mental and neurological disorders, which were among the most frequently used in the eligibility determination process. GAO also determined that SSA would likely miss its targeted time frames for four of these six body systems. Therefore, GAO recommended that SSA explicitly identify the resources needed to fund the work needed to complete these updates.[63]

Some of the ALJ decisions reviewed by the Subcommittee relied upon a medical listing to award disability benefits. In a number of those cases, the ALJ merely provided the listing number and stated that the claimant "met the listing" at Step 3 of the sequential decision process, because the claimant alleged a particular diagnosis. At times, the ALJs failed to explain how the objective medical evidence in the case file demonstrated that the elements of the particular listing were met.

A second set of issues involved medical listing 12.05, which identifies the medical criteria for "mental retardation." To meet this listing as an adult, a person must not only provide evidence such as low scores during IQ testing, but must also demonstrate that the condition existed prior to the age of 22 years old, and that the claimant also had certain other limitations restricting the ability to work.[64] Frequently, ALJs relied heavily on IQ testing results, but failed to demonstrate how a person met the age-related requirement or other required limitations. The Subcommittee investigation also detected a strange pattern in some cases

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[61] Government Accountability Office, Modernizing SSA Disability Programs, Program Made, but Key Efforts Warrant More Management Focus, GAO-12-420, July 2012, http://gao.gov/assets/600/591701.pdf.
[62] Government Accountability Office, Modernizing SSA Disability Programs, Program Made, but Key Efforts Warrant More Management Focus, GAO-12-420, July 2012, http://gao.gov/assets/600/591701.pdf.
[63] Id.
[64] Social Security Administration, Medical Listings, 12.00: Mental Disorders, http://www.ssa.gov/disability/professionals/bluebook/12.00-MentalDisorders-Adult.htm#12_05.

in which the claimant applied for disability benefits related to musculoskeletal or other physical ailments, but after getting denied and obtaining an attorney, applied for and were found to have met the medical listing for mental retardation.[65]

In an interview with ALJ Thomas Erwin, the Hearing Office Chief Administrative Law Judge from Roanoke, Virginia, he noted that cases like this are difficult. He explained that he sometimes has to take additional steps to make sure he has all the information he needs when a claimant changes allegation in the middle of the application process. "If a claimant says back pain, but suddenly there is a record for depression and anxiety from a psychologist, I may send the person for an independent exam."[66]

SSA guidelines allow for an ALJ to request an additional consultative exam, which will be arranged through the State DDS office.[67] By going through the DDS office, this reduces the chances any interested parties might sway the results for or against the claimant. Judge Erwin noted that some attorneys will try to provide a "store bought opinion," which he said were more frequent for mental exams than for physical exams. "If it's clear the attorney just sent the person out, my Spidey sense goes off a little," he added.

Oklahoma City ALJ Dell Gordon sounded a similar note, explaining that mental impairments were the most difficult to deal with, requiring more of his time and attention. The difficulty, he said, was in sorting through good evidence and "evidence that doesn't seem genuine." The problem is that "canny attorneys can buy an extremely favorable description that finds someone extremely disabled," even if they do not have a long-term relationship with the claimant.[68]

Virginia Case 249. In 2010, ALJ William Russell awarded SSDI benefits to a 55 year-old woman finding she met the criteria of Listing 12.05(C) for mental retardation. To meet this listing, a person is required to show the condition began before the age of 22; to demonstrate an IQ between 60 and 70; and to demonstrate a "significant work-related limitation."

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[65] Indeed, Roanoke, Virginia Hearing Office Chief Administrative Law Judge Thomas Erwin noted this was a frequent occurrence with regard to claimants that appeared before ALJs in his office.
[66] Subcommittee Interview of Judge Thomas Erwin (9/7/12)
[67] HALLEX I-2-5-20. Consultative Examinations and Tests. http://www.ssa.gov/OP_Home/hallex/I-02/I-2-5-20.html
[68] Subcommittee Interview of Judge Dell Gordon (9/7/12)

This case highlights the difficulty for ALJs as they weight all relevant evidence. While the case file contains sufficient records to support the 12.05(C) listing, it also fit a pattern that several judges raised as suspect. In the claimant's original application for benefits, the only work-related limitation she alleged was COPD, a severe breathing condition. The ALJ awarded benefits, however, finding the claimant met the listing for "mental retardation" with a second "significant work-related limitation" of anxiety.

Moreover, during the ALJ hearing, the judge noted that she needed more evidence, and so requested an additional consultative exam. Only, the exam was arranged by the claimant's attorney, rather than by the judge. When asked about the doctor to whom the client was sent, Judge Erwin noted that he was familiar with the person. He explained how this particular doctor "only does those for attorneys," referencing consultative examinations for disability claims.

In his opinion, the Judge pointed to no specific medical evidence supporting his finding, and simply restated the medical listing:

> The claimant's impairments meet listing 12.05(C). The "paragraph C" criteria of this listing are met because the claimant has mental retardation initially manifested before age 22 with a valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function.

Medical Evidence of Record. Progress notes in the claimant's file were from her treating physician and dated between 2007 and November 2009. The claimant was treated for seasonal allergies, high cholesterol, headaches, and hypertension, all of which were controlled with medication. After she applied for disability benefits, she complained of sleep apnea, which was successfully treated with a Continuous Positive Airway Pressure (CPAP) machine.

DDS sent the claimant for a consultative examination on October 29, 2008. The physician found:

> The claimant's appearance, behavior and speech were normal. Thought process and content were normal. Concentration and attention were normal. Judgment and insight were normal. Attitude and degree of cooperation was normal. Fund of information seems adequate.

DDS denied the claim and reasoned:

> The evidence shows that you have pain in your back, but you are still able to sit, stand, walk, and move about within an adequate range without assistance. You have breathing problems, but a recent breathing study has shown that you return a sufficient ability to breathe. There are many jobs in the economy that do not require much education. Migraines are very bothersome, but generally respond well to treatment and medication. There is no evidence that you have significant difficulty with vision. Your hypertension has not caused you any severe complications.

Attorney Procured Mental Opinion Inconsistent with Medical Records. Following SSA's denial of the claimant's initial application, her attorney sent the claimant for a mental evaluation on September 27, 2010. Having only a 7th grade education, the doctor found the claimant "produces IQ scores of VCI 66, PRI 60, WMI 71, PSI 68, and FSIQ 60." Despite her low IQ, the claimant had never before complained of a mental impairment. In the report from that doctor, it was noted that the claimant's "Standardized test scores (Lorge-Thorndike) from fourth grade report Total IQ 53, but the referenced standardized test results were not present in the claimant's file. The same physician also diagnosed her with generalized anxiety disorder and mild mental retardation.

No evidence indicated the claimant ever complained of a mental condition prior to the 2010 medical evaluation arranged by her attorney. There are no references in the progress notes that she suffered from mental retardation or a low IQ. She arrived to all appointments alone, "wanted to know her lab results" and asked questions directly of the doctor, and "verbalized understanding [of] all instructions and agree[d] with treatment plan[s]." Her 2008 consultative examination found her thought process, concentration, and judgment to be "normal."

She applied for disability in 2009, and progress notes indicated she suggested to her physician that she might qualify for benefits based on chronic obstructive pulmonary disease (COPD). Nowhere in the physicians notes is such a condition discussed prior to the claimant's suggestion. The physician indicated he would obtain the records SSA procured during the claimant's CE, if any existed, regarding a COPD evaluation. The ALJ opinion does not reference this condition.

Despite conflicting medical evidence of record, the ALJ apparently relied solely on the mental evaluation procured by the claimant's attorney and found the claimant qualified for benefits based on Listing 12.05(C).

Alabama Case 57. In 2010, ALJ Vincent Intoccia awarded SSDI and SSI benefits in a bench decision during a four-minute hearing to a 35 year-old man complaining of "mental problems and seizures." The Judge determined the claimant met the criteria of listing 12.05(C). While the case file contained records indicating that the claimant had a low IQ, it did not demonstrate an "onset of the impairment before age 22" or existence of a second, significant work-related limitation that took effect prior to the expiration of the individual's disability insurance.

DDS denied the claim on May 30, 2008, explaining:

> We have determined your condition was not disabling on any date through 7/12/06, when you were last insured for disability benefits. In deciding this, we considered the medical records, your statements, and how your condition affected your ability to work.
>
> When applying for disability benefits, you must meet certain eligibility requirements. The information in your file shows that you last met the insured status requirements for consideration of disability was 6/30/07.

Two months later on July 23, 2008, the claimant obtained representation and appealed the denial.

The majority of the medical records in his case file pertain to treatment related to a November 2007 accident when the claimant was hit by a car. The claimant sustained a broken tibia and clavicle and a cerebral hemorrhage. The accident occurred five months after the claimant's DLI and therefore, could not be used to award benefits to the claimant.

In addition, medical evidence indicated the claimant's limitations as a result of the accident would not create work-related limitations that would persist beyond a year, as required to meet the criteria of Listing 12.05(C). Medical records dated February 4, 2008 show that following surgery, the claimant had no clavicle pain and was healing. His physician cleared him to bear weight on his injured leg as much as he could tolerate, and x-rays showed "excellent alignment of his fracture."

At the February 3, 2010, four-minute hearing, Judge Intoccia did not ask the claimant any questions, and the claimant did not speak. Only the judge, the claimant's attorney, and a vocational expert provided testimony for the record. The key exchange discussing the claimant's medical listing was as follows:

ALJ: And it's my understanding, [claimant's attorney], essentially your position is that [claimant] meets 12.05C?

ATTY: Yes, sir.

ALJ: Okay. I would, I really have to agree with you on that position. I really have no questions for him unless you do.

Judge Intoccia immediately issued a bench decision and provided only the following explanation:

> To summarize briefly, I found you disabled as of July 1, 2006 because of mild mental retardation, Fetal Alcohol Spectrum Disorder (FASD) and 22a11 Deletion Syndrome so severe that your impairment(s) meet the requirements of (C) listed in the Listing of Impairments.

Here, the claimant's verbal, performance and full-scale IQ scores were rated as 69, 68 and 73. The medical record, however, contained little concrete evidence of a second severe impairment prior to the claimant's DLI of June 2007. The only evidence in the claimant's file that mentioned the secondary impairments listed above only speculated they were issues for the claimant. A medical record from a mobile clinic on August 19, 2009 stated:

> [Claimant] with a long history of neurodevelopmental abnormalities as well as a behavioral associated with material drinking. His manifestations are likely to be due to prenatal exposure to alcohol, but additional medical work up is needed and in this context chromosome analysis as well as DNA analysis for Fragile X syndrome and a CGH array will be requested today. [Claimant's] father was encouraged to continue with current interventions and therapies…
>
> Chromosome analysis was reported as normal (46XY) and a DNA study for Fragile X was negative. However, a CGH array revealed a 22q11 deletion of 2.4Mb typical of the DiGeorge Syndrome deletion. This finding was discussed with [claimant's] father by phone. 22q11 deletion is among the most common chromosomal abnormality in humans and it is associated with neurodevelopmental disabilities including cognitive deficiencies associated medical problems and mental illness later in life. In this context, the family was encouraged to follow up in our clinic for further discussions

> and additional recommendation. This laboratory result suggests a dual diagnosis Fetal Alcohol Spectrum Disorder (FASD) and 22q11 deletion syndrome.

The examining physician only speculates as the claimant's potential diagnoses. No other medical record in the file indicated the claimant returned to confirm the potential diagnoses, or for the suggested treatment.

The Judge also failed to address the claimant's extensive history of alcohol abuse. A consultative exam stated the claimant "began drinking alcohol around the age of eighteen. At one time, he drank an estimated 'one or two' cases of alcohol [per] week." It also noted he "has gotten into a car to drive in front of police while drinking. He bought paper to roll marijuana cigarettes in front of a policeman and was subsequently charged with possession." The physician noted the claimant "has been arrested twice for DUI and once for possession of marijuana."

Virginia Case 287. In 2009, ALJ Geraldine Page made a fully favorable award of SSI and SSDI benefits effective August 31, 2005, under listing 12.05(C) due to obesity, migraine headaches, chronic fatigue syndrome, anxiety, and mild mental retardation. The ALJ determined the claimant met the criteria of medical listing 12.05(C) – cited above – due to an IQ between 60 and 70 and the other listed ailments, which the judge determined to be so severe as to limit her ability to work. Objective medical records, however, inconsistently referred to those other impairments and failed to support a finding that they were severe enough to cause work-related limitations. The claimant worked as a custodian part-time and on an as needed basis.

Medical Listing Requirements. Judge Page cited a report that found "the claimant obtained a verbal IQ score of 70, a performance IQ score of 65, and a full scale IQ score of 65" to satisfy the first criterion of 12.05(C).

Under the listing, the Judge must also find "a physical or other mental impairment imposing an additional and significant work-related limitation of function." To satisfy that part of the listing, the judge provided only the following conclusory statement:

> Thus, the claimant's obesity, migraine headaches, chronic fatigue syndrome, and anxiety impose additional and significant work-related limitation on her ability to function mentally and physically. Consequently, the Administrative Law Judge finds that, taking into consideration the additional mental and physical impairments the claimant possess, both of the criteria in Section 12.05(C) are satisfied.

The ALJ did not explain how the additional impairments limited the claimant's ability to work, especially in light the claimant's continuing to work even after alleging a disability.

Claimant's Work Record. Evidence in the claimant's file indicated she was able to work for more than seven years despite her disability, although her wages did not rise to the level of SGA, according to agency documents. A vocational rehabilitation report noted that the claimant is "on the substitute list for the [] County Public School as a custodian and cook" and "hoped she could get a permanent job with the school system." On her application, the claimant reported she worked for the school from 2000-2007, one day a week for six hours a day as both a substitute custodian and kitchen worker.

Psychological Evaluations. In a consultative exam dated May 27, 2008, the examiner found the following:

> The results of this psychological evaluation revealed a woman who has had a work history that extended for five or six years. Apparently, she must have been functioning reasonably well to have sustained employment for that long. She does a wide variety of tasks around the house and socializes with various people. She has a wide variety of avocations that she enjoys thoroughly. Her communication skills are good. She showed no real problems with either memory deficits or concentration [but] is somewhat anxious and is overreactive to stressors. It is perplexing that the claimant has never really sought any extensive psychotherapy to assist her in dealing with her periodic anxiety and periodic episodes of transient depression. Neither of these appears to be incapacitating.
>
> From a psychological point of view, it is the examiner's opinion that [the claimant] is capable of functioning in a 40-hour per week job, depending upon the circumstances. It is felt that she could be an effective worker, sustain her employment, get along reasonably well with fellow employees, supervisors, and even the general public. It is likely that she would need to work around somebody who watches over her to some extent but this does not have to be extensive after she learned the ropes and demands of the employment.

The examiner also noted the claimant had a Global Assessment of Functioning, or GAF, of between 65 and 70. The GAF is a tool used by

mental health professionals to determine a person's capacity for social or professional engagement. It runs from 0-100, and a score between 60 and 70 is given to those with mild limitations. A prior exam in September 2007 found the claimant with a GAF of 57.

In yet another psychological evaluation, dated May 10, 2007, the examiner noted that, despite a 2006 GAF score of 54, he rated her with a GAF of 70. He went on to explain how the claimant had attended community college classes for several years, and:

> denies that she has been depressed and states that her mood is usually "good." She states that she sleeps well and energy is adequate; appetite is good; she is irritable at times. She enjoys socializ[ing] and is not withdrawn or agoraphobic. She reports no acute anxiety or panic attaches but states that she is afraid to drive herself to work and has never driven alone. She is able to drive when accompanied by her mother.

The examiner determined that he did "not believe that any pharmacological treatment or medications are indicated at this time" and recommended that the claimant begin counseling to "work towards becoming more independent."

In a psychological evaluation on October 20, 2006, the claimant noted "she is currently working for [employer]" and "she has worked in the past with JPTA and WIA. She is uncertain of any employment problems." The claimant also noted "her income helps with the household income, and this is mainly her step-father's income." The claimant reported "she spends her time working."

ALJ Hearing. At the ALJ hearing in April 2009, the claimant testified she was seeking treatment for her anxiety and saw a therapist for the first time earlier that week. Because she had so recently begun treatment, no treatment records existed documenting the extent to which the claimant suffered from anxiety and none were included in her case file. In addition, no documentation supported the conclusion that the claimant's obesity, migraine headaches, or fatigue prevented her from working, in light of her actual work record.

In the fully favorable decision explaining her reasons for finding the claimant met listing 12.05(C), Judge Page referred to one of the records discussing the claimant's GAF score. The judge cited only the oldest GAF score of 54, even though later scores for the claimant ranged from 57 to 70, and even the doctor who assigned the score of 54 had concluded the "prognosis for placement in an employment position comparable to her skill level would appear to have a fair prognosis."

While the judge's decision to award benefits may have been the correct one, her opinion failed to provide a reasonable explanation of how the claimant's other ailments significantly limited her ability to work, given the claimant's work history.

Virginia Case 282. In this case, ALJ Karen Peters awarded benefits to a claimant under the affective disorder listing 12.04 for bipolar disorder, stating that the requirements of the listing were met, though her decision did not explain why. Moreover, the file contained evidence from a medical exam in which the doctor determined the claimant *did not* meet 12.04, and in fact called her impairments "non-severe."

Under listing 12.04, the SSA regulations lay out the requirements needed for this impairment. For someone diagnosed with bipolar disorder, such a person must also meet the following to be awarded benefits (in pertinent part):

> **12.04** ***Affective disorders***: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.
>
> The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.
>
> A. Medically documented persistence, either continuous or intermittent, of one of the following:
>
> 3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);
>
> AND
>
> B. Resulting in at least two of the following:
>
> 1. Marked restriction of activities of daily living; or
> 2. Marked difficulties in maintaining social functioning; or
> 3. Marked difficulties in maintaining concentration, persistence, or pace; or
> 4. Repeated episodes of decompensation, each of extended duration;

Prior to the claim being denied by SSA, a consultative examiner reviewed her records on August 12, 2008, and found that they showed her to have a non-severe mental impairment and even questioned whether her claims were fully credible:

> In assessing the credibility of the claimant's statements regarding symptoms and their effects on function, her medical history, her activities of daily living and the type of treatment she received were considered. Based on the evidence of record, the claimant's statements are found to be partially credible.

Another doctor looked over the material two days later and concurred:

> Consequently, while the MER indicates the likelihood of diagnoses of Depressive Disorder NOS and Anxiety Disorder NOS, the associated symptoms would not appear to be severe enough to prevent the performance of all levels of work. Therefore, the claimant's disability allegations cannot be viewed as fully credible.

The claimant was then seen in a consultative examination on January 5, 2009, to evaluate whether she met the criteria of either listing 12.04 or 12.05. The physician determined she did not and indicated that her impairments were "not severe."

On June 3, 2010, Judge Peters conducted a hearing by video at which the claimant appeared with her attorney. During the hearing it was discussed that the claimant had previously received SSI benefits, but was dropped from the program when she got married because she no longer met the resource test. During this discussion, however, the woman became unable to speak or answer questions, only able to nod. Judge Peters cut the hearing short after 14 minutes, deciding that she would have to send the claimant for a second consultative exam.

In July 2010, the claimant's attorney arranged for her to see a psychologist, but this exam was also cut short because of a similar incident. The psychologist wrote:

> Upon trying to administer her the third subtest to the WAIS-IV [the claimant] fell into a total silence and seemed unable to speak or move. The examiner made several efforts to draw her out of this "spell" but was rather unsuccessful. Then help was sought from her son in the waiting room. He immediately came and recognized this pattern and began to

> comfort her and talk with her. We got her something to drink, which she did through a straw. He reports that this Conversion Disorder pattern has been worsening of late, and she is having it almost every three days at this point in time. He also noted that they almost always try to have someone around her all of the time if not most of the time.
>
> Eventually, while her son monitored her, the examiner went and talked with the facility guard who is also the head of the facility. We inquired with the son about calling 9-1-1, but he insisted that that would really not do any good. It was then offered to him that we would help him get her to the car, and he believed that was a good idea, which we did. Her son as well as the guard and facility head helped her to the car with the use of a rolling chair. She was successfully loaded in the car and then left. During this episode, she spoke only single words such as "help and "drink." Her son seemed very familiar with this pattern and was very comforting toward her during the time that it occurred. Therefore, obviously, the testing was truncated.

Judge Peters' fully favorable decision referenced the July consultative exam and stated that claimant met the 12.04 listing. Instead of explaining how any of the evidence in the file supported this decision, however, the judge wrote:

> The claimant's impairments meet the criteria of section 12.04. The paragraph A criteria are satisfied because the claimant has bipolar disorder. The paragraph B criteria are satisfied because the claimant's impairments cause marked difficulties in maintaining social functioning, and marked difficulties in maintaining concentration, persistence, or pace.

ALJ Peter's failed to explain how the marked difficulties the claimant experienced any marked difficulties with regard to social function. In fact, the claimant told the physician at her consultative exam that "she goes to the grocery store with someone," "she does attend church," and she "socializes with family members."

Virginia Case 291. ALJ Gordon Malick awarded disability benefits to a claimant under a listing for Crohn's Disease, but lacked the necessary medical evidence to support the award.[69]
The listing states, in pertinent part:

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[69] The judge awarded the decision under listing "5.07(B)," but since there is no such listing, he likely meant to refer to "5.06(B)."

> ***5.06 Inflammatory bowel disease (IBD)*** documented by endoscopy, biopsy, appropriate medically acceptable imaging, or operative findings with:
>
> A. Obstruction of stenotic areas (not adhesions) in the small intestine or colon with proximal dilatation … requiring hospitalization for intestinal decompression or for surgery, and occurring on at least two occasions at least 60 days apart within a consecutive 6-month period; or
>
> B. Two of the [following specific medical conditions] despite continuing treatment as prescribed and occurring within the same consecutive 6-month period[.][70]

It is important to note that in meeting the requirements of listing 5.06(B), a claimant must be found to have met *two* of the listed criteria. Further, each of the criterion is based on objective medical testing, containing little if any room for subjective judgment from an ALJ. The claimant appears to lack the secondary medical criteria necessary for disability benefits.

Medical Evidence of Record. The claimant complained of several days of fatigue following injections she took six times per year to treat her Crohn's disease. These injections appear to have successfully controlled the claimant's condition. A physician's note dated October 12, 2006 read: "[S]he has had no hospitalizations or flares during the last year. She is currently in maintenance with Remicade 7.5 mg every 8 weeks without any complications." On that same date, the physician determined the claimant's Crohn's disease was "currently in remission."

Attorney Procured Examining Physician Opinion. The claimant's attorney sent her to a physician, who provided an opinion on the claimant's ability to work. He concluded she would have difficulty holding down a job, but identified only one reason – fatigue.

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[70] A claimant must prove two of the following: (1) Anemia with hemoglobin of less than 10.0 g/dL, present on at least two evaluations at least 60 days apart; (2) Serum albumin of 3.0 g/dL or less, present on at least two evaluations at least 60 days apart; (3) Clinically documented tender abdominal mass palpable on physical examination with abdominal pain or cramping that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; (4) Perineal disease with a draining abscess or fistula, with pain that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; (5) Involuntary weight loss of at least 10 percent from baseline, as computed in pounds, kilograms, or BMI, present on at least two evaluations at least 60 days apart; or (6) Need for supplemental daily enteral nutrition via a gastrostomy or daily parenteral nutrition via a central venous catheter.

> With regard to the standard residual functional capacity, I think that the fatigue is her only limiter. Her ability to walk 6 hours in an 8 hour day is probably limited but most of the other things would not be a problem. I also don't think this is psychological, she said that you [her attorney] had suggested she may need to see a therapist but she and I both feel that this is probably not necessary ....
>
> With respect to disability, it sounds as if her primary problem is fatigue. She doesn't have any actual focal deficits that would be causing a problem with work, but definitely fatigue is a side effect both of Remicade and of Crohn's disease.

Fatigue, even if significant, is not, however, one of the criteria for Listing 5.06. Indeed, at reconsideration, DDS determined:

> The evidence shows that you are treated for Crohn's disease and that you experience joint and muscle pain at times. However, you have not become malnourished nor underweight from digestive troubles. You remain able to stand, walk, and move about adequately without assistance. You have good use of your hands and arms. We realize that you may continue to experience difficulties, but your condition is not so severe as to be considered disabling.

In his fully favorable decision, Judge Malick awarded benefits based on "5.07B," but based his findings primarily on the severity of the claimant's fatigue, rather than on her meeting one of the specified medical conditions. Citing the exam document noted above as Exhibit 1F, he wrote:

> Based on the medical evidence and statement from the claimant's physician (Exhibits 1F, 3F, 6F), the Administrative Law Judge finds that the claimant's impairments are severe and meet the criteria of section 5.07B ....

Also cited were Exhibit 3F, which explained the Crohn's disease to be "[c]urrently in remission," and Exhibit 6F, which related to complaints of shoulder pain.

While the claimant may have experienced significant fatigue and perhaps could have qualified for disability benefits by meeting the required criteria, Judge Malick justified the award by citing the Crohn's

Disease medical listing, without explaining how the claimant met any of the specific requirements.

Oklahoma Case 186. In this case ALJ Lance Hiltbrand awarded a 7 year-old child SSI benefits for an "affective mood disorder" under medical listing 112.02, which he determined began on the day the child was born. Listing 112.02 does not, however, have any criteria for children under the age of one. Medical records were also not provided for any time prior to when the child was five years old.

The child was denied SSI benefits when he was in Kindergarten, but his mother reapplied while he was in first grade after a series of suspensions from school the year before. The documents in the file contained conflicting evidence regarding whether the child met the criteria for listing 112.02.

Since to meet the listings, the criteria require feedback from "parents or other individuals who have knowledge of the child," the child's teacher filled out a detailed Teacher Questionnaire on September 24, 2007, shortly after the application was filed. She described the child as having few limitations, citing as the most serious problem for the first-grader, "organizing own things or school material."

On November 29, 2007, SSA sent the claimant to a consultative examiner for allegations of mood disorder, ADHD, "intermittent explosive traits," and a learning disorder. The examiner found some of the impairments to be severe, but also determined they "[do] not meet, medically equal, or functionally equal the listings." The teacher evaluation and CE, thus, agreed that while the child had some issues, he did not meet the requirements of the affective mood disorder listing.

On February 27, 2008, a DDS doctor reviewed the claimant's file after a request for reconsideration. Out of six major domains of functioning, the DDS doctor found the child with three areas in which there were "no limitations" and three in which they were "less than marked." As such, he concluded the child did not meet the requirements of a listing and the claimant was denied benefits.

Judge Hiltbrand held a hearing on March 24, 2009, at which the child appeared along with his mother and her boyfriend. Discussion about the child's disruptive classroom behavior consumed much of the time, but his mom explained that he was different at home.

> MOM: And [the claimant's teacher] writes comments like he's finally calmed down and sat down and started working by 11:00, which means from the time he got

> there until 11:00 he's been bouncing off the wall. He's been up walking round the classroom, bothering the other children. [His teacher] has [stated] again, very disruptive in the morning, calms in the afternoon. [Claimant's teacher] has [written] disruptive during film. Sent to the hall. And it's not really a week goes by he's not sent to the hall or ISR. His desk is away from the rest of the children in the classroom because he gets up, walks around the classroom. He talks out loud. Laughs to himself. When he's supposed to be doing work he'll fiddle and push the pencil somewhere else.

ALJ: Will that be tolerated at home if he did something like that at home?

MOM: No. He's a –

BOYFRIEND: He doesn't do it at home.

MOM: – totally different person at home.

His mom went on to explain how the child's school principal believed the behavior problems were related to immaturity, "the principal at [the child's elementary school] said that it's his maturity level. That he has a – because he's the youngest second grader at the school because he turned seven in August."

In addition to being the second youngest child in his grade, the mom also explained he had a disruptive daily schedule. She woke her four children up every morning at 4 a.m. because, having only one car, her boyfriend drove her and the children to her work at 4:45 a.m. While the children would come home and try to get some additional sleep, they were taken most mornings to before-school care and stayed for after-school care.

Near the end of the half-hour hearing, the judge noted how, "it seems like he's extremely well behaved here." ALJ Hiltbrand then ordered an additional consultative exam before making his decision. This consultative exam took place several months later on June 24, 2009, at which the doctor found the child met listing 112.02, finding severe impairments in almost every possible category.

Judge Hiltbrand issued a fully favorable decision relying heavily on the June exam. While the CE noted the child met the medical listing, it also stated the claimant

> did not demonstrate any hyperactive or impulsive behavior during the evaluation. He looked around the room more as the evaluation proceeded but never got out of his seat. He followed instructions without having them having to be repeated and worked carefully. He smiled frequently and appropriately and only sometimes frowned when he was trying to figure out an answer. He put forth good effort and his test results are thought to be a valid assessment of his current functioning.

The judge also determined that the child's mood disorder began the day he was born in 2001, citing his "premature birth and low birth weight." The opinion did not reference any medical records prior to 2006, when the child was five years old, in reaching that determination. Therefore, the ALJ determined the claimant was disabled five years prior to the availability of supporting medical evidence.

D. Failure by ALJ to Conduct a Proper Credibility Analysis

One of the main reason identified by the DQ for remand was the failure of the ALJ to perform a proper credibility analysis of the claimant. In at least two cases, the investigation discovered evidence of the ALJ failing to conduct such an analysis. In both cases, claimants were awarded disability benefits, but the evidence questioning credibility was not mentioned or discussed by the ALJs in their decisions.

Oklahoma Case 109. In this case, Judge Lance Hiltbrand awarded SSDI benefits to a woman who claimed she was unable to work due to an injury to her right shoulder. The injury was so severe, she claimed that she could not use her right arm. Though a doctor observed her using the same arm without any problem, the ALJ awarded full disability benefits based on her ailment.

The ALJ noted the claimant said her disability began when she "was injured on the job while working as a cake decorator" in late 2003. In July 2004, the claimant underwent surgery for a tear to her rotator cuff in her right shoulder.

She applied for disability benefits in November 2005, but was denied by DDS following her initial application and after reconsideration. She filed a request for an ALJ hearing on January 12, 2007.

On October 24, 2007 the claimant's attorney sent her for a consultative exam for an evaluation "of injuries which [the claimant] stated occurred

... while working." The claimant told the examining doctor that she was stacking boxes and "she felt a 'pulling sensation' in her right arm and shoulder." She explained how she never reported the injury, but instead continued to work. In May 2004, the claimant "took a leave of absence so she could find out what was wrong with her right shoulder." After both surgery and physical therapy, the claimant stated "she has no relief of the pain in the fingers of her right hand or her right forearm." Further, the claimant stated:

> She has pain in the right shoulder with raising her arm above her head. She states she has pain in the right shoulder with lifting a can of vegetables. She states she has pain in the right shoulder with turning or twisting at the elbow. She states she has pain in the right shoulder with pushing and pulling. She states she has numbness and tingling in the right shoulder. She states she has popping, clicking, and locking of the right shoulder. She denies other complaints to the right shoulder.

Once the claimant was out of the doctor's office, however, things changed. The doctor noted the claimant:

> was observed leaving the office today unlocking her truck door and opening it with her right arm. She was also observed extending her right arm to place a bag in to the right front passenger seat. She was observed utilizing both of her arms to steer the wheel of her vehicle.

The doctor concluded the claimant "has sustained no permanent partial impairment to the right arm or the right hand as a result of the above stated accident." The doctor also opined the claimant's "period of temporary total disability has long since ended and she may return to employment. She is in no further need of medical care or continuing medical maintenance." As such, the doctor stated "based on age, education, training, and work experience [the claimant] is not permanently and totally disabled or in need of vocational rehabilitation."

Despite the CE doctor stating the woman used both hands to drive the car, at the hearing, the claimant testified,"I drive one-handed, unless it's real windy and then I keep that one down there." She also testified that she goes to casinos with family members.

Despite this evidence from the claimant's own attorney showing the claimant had full use of her right shoulder and arm just five months before her hearing, Judge Hiltbrand awarded the 44 year- old claimant

benefits without addressing any of the issues raised by these inconsistencies.

Oklahoma Case 145. This next case involved a veteran who sought disability benefits for post-traumatic stress disorder (PTSD), which he said arose from his military service. Throughout his medical files, however, his doctors noted not only how he was prone to exaggeration, but at times even directly accused the claimant of malingering.

He applied for disability in August 2005 for back pain and anxiety, but in January 2006 was denied at the initial level by DDS. Among the medical evidence DDS considered in making its determination was a consultative exam to assess the claimant's physical condition, which was done on October 18, 2005. The doctor conducting the exam was a primary care physician not a psychologist, but nonetheless noted the claimant "has a history of social anxiety." Another medical record reviewed by DDS was a "mental status exam" held on November 7, 2005. The psychologist, who was not a treating physician, diagnosed the claimant with "schizophrenia" and "paranoid type Posttraumatic Stress Disorder." He added: "Prognosis is judged to be fair. There is a moderate probability that treatment will result in substantial improvement over the next twelve months."

Then in December 2005, a second consultative examiner reviewed all of the claimant's medical records, making particular mention of the diagnosis of "schizophrenia" at the November mental status exam. She wrote: "This [diagnosis] of Schizophrenia is not consistent with any of the [medical evidence of record], current or distant."

The initial claim was denied in January 2006, and again upon reconsideration in August 2006, but ALJ Peter M. Keltch approved the case in June 2008, relying heavily on the same two exams from October and November 2005. Judge Keltch determined the claimant suffered from "Schizophrenia, post traumatic stress syndrome, and a history of polysubstance abuse." Judge Keltch concluded the claimant met the criteria for medical listings 12.03(A), (B) and (C) related to "Schizophrenic, paranoid and other psychotic disorders."

A more thorough review of the file, however, might have raised questions about whether benefits should have been awarded. In 1997, eight years prior to his disability application, the claimant applied for veterans benefits related to PTSD. On September 30, 1997, a psychiatrist conducted an examination, but failed to make a final diagnosis because of the claimant's "malingering."

> The differential diagnosis is so broad because I find the veteran to not be a very credible historian. He generally endorsed the presence of almost all symptoms asked of him. Reference should also be made to the admission and discharge notes regarding his 1997 psychiatric hospitalization which also raises issues of credibility. If the veteran's history was accurate, it would be my opinion that he does have a post-traumatic stress disorder related to his [military] experiences. However, I do not believe that his history is accurate based on his clinical presentation.

Then in October 2006, nearly a year after the consultative examinations, the claimant again underwent a mental evaluation. During the exam, the man discussed his military service and how he had recently lost his cousin, who "was his closest friend." In the conclusion of the evaluation, the examiner determined: "[The] results were not valid. His profile was similar to the profiles of others who try to present themselves with more serious pathology than they have. Over reporting psychopathology is common for negative and defiant personality types ...."

His medical records mentioned, as well, that he applied for service-connected disability benefits from the Department of Veterans Affairs on multiple occasions, but was turned down each time.

On June 9, 2008, Judge Keltch held a hearing to consider the case, but the claimant did not appear to testify. Judge Keltch explained he had a prior conversation with the man's attorney and concluded it would be dangerous to have him in the hearing room: "The reason he is not in the hearing room is that the gentleman has a severe mental problem, and it is thought to be safer, number one, for him not to be in the hearing room ...."

At the hearing, which lasted approximately 10 minutes, the judge asked the medical expert present to consider the mental evaluation from November 2006, which resulted in a diagnosis of schizophrenia. The medical expert present, who had not met or examined the claimant, said she concurred and that he met medical listing 12.03, at which point the hearing was closed.

In his fully favorable decision, ALJ Keltch relied heavily on the November 2006 mental status exam (MSE), as well as the medical expert at the hearing. He failed, however, to mention how the December 2006 exam said the MSE was inconsistent with the rest of the medical record. Moreover, his decision made no mention of the multiple

references to malingering, and that other doctors had called the claimant's truthfulness into question.

E. Poorly Drafted On-The-Record Decisions by Senior Attorney Adjudicators

Administrative Law Judges are supported by staffers to help organize case files, write decisions and deal with claimants. Among them are attorneys – called "senior attorney adjudicators" – who help draft their decisions once an ALJ has determined a case. In recent years, however, senior attorneys have also been allowed to write favorable, on-the-record decisions that do not need the approval of an ALJ. By allowing senior attorneys to screen cases to write favorable decisions the senior attorney determines meet program requirements, the agency has intended to move "payable" cases through the system more quickly, leaving the more difficult decisions for the judges.[71]

In the cases reviewed by the Subcommittee, however, some of the opinions written and approved only by senior attorneys contained a number of problems.

Oklahoma Case 149. In this case, the claimant applied for back pain, but was awarded benefits under medical listing 12.05(C) for mental retardation. The 2008 written opinion by an SSA senior attorney included only the information favorable to the claimant, while failing to explain or acknowledge conflicting evidence in the file.

To qualify for this medical listing, a claimant must report an IQ of between 60 and 70, show that the impairment has been present since at least age 22, and have an additional impairment severe enough to restrict work. In this case, the claimant was determined to have an IQ score of 70, but two doctors remained unconvinced that the listing criteria were met.

On October 11, 2006, a DDS doctor reviewed the claimant's file to determine if she met medical listing 12.05, and found she did not. His determination apparently stemmed in part from the fact that the woman did not claim to have any mental impairments.

> 47 yr. old female does not allege mental. She has not had psychiatric treatment. She has pain due to physical problems and there is associated depression. She was in Special Ed from the 6the grade on. She lives with her two sons. She was

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[71] See Amendment to the Attorney Advisor Program, 72 Fed. Reg. 44763 (August 9, 2007); Extension of Sunset Date for Attorney Advisor Program, 76 Fed. Reg. 18383 (April 4, 2011).

> cooperative at the psych CE. [IQ] scores V 72 P 73 and FS 70. ADL's She is able to do the cleaning, cooking and laundry. She is able to drive and shop for groceries. She goes to church. Some restrictions are present due to pain.

One of the considerations the agency must make is whether a claimant can manage their own funds, if awarded benefits. Patients found to meet medical listing 12.05 nearly always are found incapable of doing this, resulting from their mental condition. Here as well, the record contained conflicting information. On August 31, 2006, a State consultative doctor said the woman could not manage her funds. One month earlier, on July 8, 2006, however, a psychiatrist evaluated her in his office and concluded that she did not suffer from mental retardation and could manage her own funds. The psychiatrist's determination matched the one reached three months later, in October 2006, when the doctor described previously found that the claimant did not qualify under the 12.05 listing.

The June 3, 2008, decision written by the senior attorney found that the claimant had an IQ score of 70, and a secondary condition of back pain that significantly limited her ability to work. To establish the second condition, the attorney cited a "medical source statement" from the claimant's doctor, which was a questionnaire filled out at the request of her attorney. The questionnaire said the woman suffered from a degenerative lumbar spine, even though another medical record from October 27, 2006, had found: "No traumatic or degenerative abnormality of the lumbar spine is present."

In the final decision, the SSA senior attorney determined the claimant suffered from "mental retardation" and "degenerative disc disease." The opinion did not acknowledge or explain the conflicting evidence in the case file on both points.

Oklahoma Case 114. In this case a SSA senior attorney awarded benefits to a woman for back pain and obesity, but failed to explain how the medical evidence supported the alleged onset date. Moreover, the opinion's brief analysis of the objective medical evidence consisted primarily of a paragraph cut-and-pasted from a letter written by the claimant's attorney.

The claimant applied for benefits after having back surgery, alleging that her disability began on September 5, 2007, "due to Crohn's disease, neck and back problems, and arthritis."

She received payments under a private disability insurance policy, and saw a rheumatologist for only the second time on January 4, 2008. The

first visit had been prior to her surgery three months earlier. In a record in the case file describing the visit, the doctor explained there had been a "misunderstanding" and that he had been asked "to write for disability without seeing her." He noted that he would need some information from her employer, adding:

> I told her that I think she is best served working to maintain her activity level. However, she has been off work. I recommend physical therapy ... for three weeks. To Whom It May Concern: The patient is unable to work until July 4, 2008. At that time, she will have no restrictions.

In early July, the rheumatologist saw her again and extended the disability until September, but noted that this was in order to collect additional information.

On July 30, 2008, the claimant visited her regular doctor to help deal with her back pain. The notes from her doctor said that one of the activities she enjoys is "bicycling."

> She states she has difficulty sitting and standing for more than 10 minutes. She has difficulty performing laundry, vacuuming, baking, and getting into the lower shelves at the grocery store. She enjoys sewing, crocheting, reading, bicycling, cooking, and baking.

It is unclear from the notes whether she was continuing to bicycle or had enjoyed it in the past.

On August 4, 2008, her initial application was denied. She was denied again by DDS under reconsideration on December 23, 2008, which noted: "You are recovering well from your back operation and should be able to return to work within twelve months."

A note in the file indicated the claimant saw her rheumatologist again on November 18, 2008, but got into a dispute with him about failing to comply with his prescribed treatment. He concluded the note saying that he would no longer see her as a patient: "Will discharge the patient for noncompliance." She found a new rheumatologist, but the records show she visited her only one time on November 26, 2008. That rheumatologist found that the claimant was disabled and could not work.

On April 21, 2009, the claimant's attorney wrote a letter to the Oklahoma City Office of Disability Adjudication and Review asking for an on-the-record decision. The letter also referenced a form filled out by the claimant's new rheumatologist the month before on March 18, and

asked that it be given "controlling weight," despite the fact that she had only seen the patient one time. The letter from the attorney contained the following paragraph:

> [DOCTOR 1] is the claimant's treating rheumatologist. She completed the enclosed physical capacities dated March 18, 2009 indicating the claimant cannot perform the requirements of even sedentary work. The claimant needs to alternate her sitting and standing at will throughout the day. She cannot use her hands adequately for simple grasping, fine manipulation, and repetitive motion tasks. The claimant can lift/carry occasionally up to *5* pounds but should never lift/carry over that amount. [DOCTOR 1] writes the claimant is in constant pain and her condition is chronic and incurable. The claimant requires daily pain medication and prolonged periods of rest due to fatigue and pain. [DOCTOR 1] writes the claimant has chronic pain and inflammation in the joints, diffuse musculo-skeletal pain which is causing fatigue, inability to concentrate and potential absences from a job due to disease exacerbation. The pain, according to [DOCTOR 1], would be disabling to the extent that it would prevent the claimant from working full time at even a sedentary position.

One month later on May 21, 2009, the SSA senior attorney issued a fully favorable on-the-record decision. It concluded that the claimant's disability began on September 5, 2007, as she alleged, but did not cite any evidence prior to October 14, 2008 – nearly a year after the fact.

More significantly, the decision contained a brief section analyzing the medical records used to conclude the woman was disabled. Not only was the March 18, 2009, doctor form given controlling weight as requested, the SSA senior attorney simply copied and pasted the above excerpted paragraph from the letter of the claimant's attorney into the official opinion. The opinion also did not acknowledge or explain the conflicting evidence in the file indicating the claimant was recovering from her back surgery and her initial rheumatologist did not view her as having severe or lasting problems. The SSA senior attorney's opinion raises questions about whether the medical evidence was properly reviewed and analyzed.

Oklahoma Case 127. In 2010, an SSA senior attorney awarded benefits to a man for degenerative disc disease and depression, finding the claimant could perform "less than sedentary" work despite a State consultant finding he was not disabled and could perform "light" work.

In the senior attorney's opinion, he discounted the opinion of doctors who performed examinations at the request of SSA, saying: "The State agency medical consultants' physical assessments are given little weight because the State agency consultants did not adequately consider the claimant's subjective complaints or the combined effect of the claimant's impairments." In contrast, the SSA senior attorney placed significant weight on the claimant's subjective complaints, while failing to acknowledge that those complaints did not always match the medical records.

One central issue involved the claimant's ability to walk. The claimant said that his disability began when he was 48 years old in December 2006, which is when he stopped working due to back pain which he described as so severe that he could barely walk. Over the course of the next several years, though, his medical records show that he could walk much further than he described.

During a doctor visit on February 16, 2007, two months after he alleged his disability began, his doctor wrote: "The patient, two weeks ago, joined the [gym] and has been exercising regularly since that time." On May 11, 2007, the same doctor wrote: "The patient has been walking four times per week." On August 6, 2007, his doctor wrote: "The patient's been walking 1-mile 3 to 4 time per week." He was reported to be "walking 1 mile per day 5-days per week," again by his doctor on October 31, 2007. Nine months later, on July 30, 2008, the doctor once more noted: "The patient is walking one mile a day at least five times per week."

During a doctor visit in October 2008, he said, "His wife lost her insurance so he'll be transitioning to a new insurance company soon." The next month, in November 2008, he applied for disability insurance. In January 2009, he filled out paperwork for SSA writing, "I have problems walking, standing, bending, sitting for any length of time." In a second form from February 3, 2009, filled out by his wife, she answered a question about how far he could walk writing, "end of drive way." However, the records that followed said he could still walk and work.

During a consultative exam with the State agency doctor in April 2009, the doctor concluded he could do light work, adding, "The claimant appears to ambulate in a safe and stable gait at an appropriate sp[eed] without the use of assistive devices."

On July 22, 2009, he visited his own doctor, complaining of back pain, but the doctor again noted that he and his wife had been making a regular practice of taking walks: "The patient seems to be doing much

better on the Cymbalta. We are still dealing with pain issues.... He's been walking a mile and a quarter with his wife every day over the past 2 ½ months."

The claimant's initial application was denied by DDS, which explained that he was "given a residual functional capacity rating for light work with occasional stooping, and a mental status rating for unskilled labor. ... Using the Medical Vocational Guidelines and Rule #202.14, which directs a decision of not disabled, this case is denied at step 5, for other work." He was denied again upon reconsideration in November 2009.

On March 2010, his attorney for the claimant wrote a letter to the SSA senior attorney working on the case in the Oklahoma City SSA office. It read: "This letter is to advise you that based upon new medical records received and income verification, we wish to amend our onset date to February 28, 2008." Two weeks earlier, the claimant's attorney had faxed five pages of medical records to the office. While the letter said that he wanted to change the onset date because of "new evidence," some of the records were already included in the file. Moreover, only one of the records was dated after the denial at reconsideration. Two were from December 2003 and March 2006 – outside the relevant time frame. None of the "new" records or the existing records in the file explained why the new onset date should be February 28, 2008, which was only a few days before the claimant's 50th birthday.

On April 2, 2010, eight days after receiving the letter from the claimant's attorney, the SSA senior attorney issued a fully favorable opinion finding the claimant disabled. The decision failed to acknowledge or explain why the determination was inconsistent with the records in the file showing the claimant's regular walking routine.

F. Poor Quality Opinions from ALJ Howard O'Bryan

The 16 disability opinions reviewed in the investigation from ALJ Howard O'Bryan, age 87, of Oklahoma City, Oklahoma stand out for their numerous problems and require their own analysis. Judge O'Bryan's opinions not only lacked sufficient judicial analysis or evidentiary support, but were at times incomprehensible. However, as one of the agency's highest producing ALJs in the nation, the impact of his opinions on the disability program has been larger than most.

Since at least 2006, Judge O'Bryan has issued more than 1,000 decisions each year – several years approaching 2,000. The highest three years were 2007 to 2009 in which he decided 1,833; 1,846; and 1,722 cases, respectively. Many of the decisions reviewed in the investigation were written during this time period. His rate for approving the award of

disability benefits in the cases he reviewed was similarly high, ranging each year between 90 and 100 percent.

While the investigation questions whether all of these cases were properly awarded, the opinions were most notable for their decidedly poor quality. First, his opinions contained substantial amounts of agency-approved "boilerplate" language. Most of this language was not specific to an individual case, but rather explained how the disability programs worked. In sections that appeared to apply to a specific claimant, however, the opinions also contained a pervasive use of boilerplate. Commonly, Judge O'Bryan used the following sentence after several pages of medical images, seemingly to explain why disability benefits should be awarded: "Various physicians, treating and non-treating, have written that the claimant suffered from various medical problems and that the claimant has significant work restrictions."[72]

Second, instead of providing an analysis of the information contained in an individual case file, Judge O'Bryan typically included partial images of medical records from the case file that he electronically copied into his opinion without explanation. For example, he routinely copied part of a doctor's examination report describing a claimant's medical condition and inserted it into his opinion on the case with no attribution or explanation. At times, the images he pasted into the record had nothing to do with the case, or directly contradicted his award of benefits. For example, in ***Oklahoma Case 135***, a woman alleged various ailments ranging from hip pain to PTSD and depression. Judge O'Bryan awarded her full disability benefits, but also copied into his decision another doctor's opinion that her claims were not always credible: "[Claimant] was very manipulative and an unreliable historian."

Third, instead of precisely identifying a claimant's disabling condition, the judge typically wrote a long list of maladies, followed by "etc., etc., etc." He used this technique whether he found a person disabled under the Medical-Vocational Rules or the medical listings. In some cases, he found claimants met three or more medical listings – followed by "etc., etc., etc." – something the Subcommittee did not encounter in any other ALJ opinion. In one extreme case, ***Oklahoma Case 135***, Judge O'Bryan made the following "finding of fact:"

> The severity of the claimant's affective (mood) disorders, classed as major depression(2960), anxiety related disorders, post traumatic stress disorder (3000), disorders of

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[72] *See*, e.g., Oklahoma Cases 132 and 166.

> backdiscogenic and degenerative (7240), chronic liver disease and cirrhosis, i.e., Hepatitis C,(5710), history of broken left femur, broken hip left side, **etc., etc., etc.,** meets the criteria of section(s) **12.04, 12.06, etc.,**

Agency Directive to Judge O'Bryan. The agency was aware of Judge O'Bryan's inadequate opinions and reprimanded him several times over the past four years. An internal agency document produced to the Subcommittee stated that in 2008, Regional Chief Administrative Law Judge Joan Parks Sanders verbally counseled Judge O'Bryan regarding the content of his opinions. Two years later in 2010, Oklahoma City Hearing Office Chief Administrative Law Judge (HOCALJ) Douglas S. Stults verbally counseled Judge O'Bryan twice about the content of his opinions.

On September 14, 2011, HOCALJ Stults went farther and sent Judge O'Bryan a formal directive, which explained:

> a review of 168 decisions issued by [Judge O'Bryan] in FY2011 shows that, in 153 of those decisions, [Judge O'Bryan] included significant amounts of superfluous information, including unnecessary and lengthy citations to legal and medical authority. In addition, [Judge O'Bryan] inserted images of the claimant's medical records in [his] findings of fact and conclusions of law, instead of analyzing the information. Furthermore, instead of making specific findings, [Judge O'Bryan] simply state[d], "etc. etc. etc," at some points of the decision.

The directive went on to remind Judge O'Bryan of his obligations:

> [As a] Social Security Administration (SSA) Administrative Law Judge (ALJ), you are responsible for conducting hearings and issuing legally sufficient and defensible decisions. See HALLEX I-2-0-5.B. A legally sufficient and defensible decision requires that you comply with SSA's laws, regulations, rulings, and policies. In order for SSA to continue to meet its obligations to the public, it is essential that ALJs discharge their duties in a timely manner that reflects a high degree of responsibility, professionalism, and integrity. You are expected to provide hearings and decisions to claimants in a timely and judicious manner. Satisfying these responsibilities requires an ALJ to follow both the letter and the spirit of the policies he is bound to follow.

The formal directive stated that while it was not a disciplinary action, should Judge O'Bryan continue to fail to follow agency policy, it "may lead to disciplinary action." To date, the Subcommittee is aware of no disciplinary action taken by the agency against Judge O'Bryan.

When interviewed regarding the directive to Judge O'Bryan, HOCALJ Stults told the Subcommittee that he felt the directive he sent to Judge O'Bryan was probably "too harsh" and "discussed more than it needed to."[73] Judge Stults explained that the catalyst for sending the directive related to Judge O'Bryan's inserting active links to internal agency documents into his decisions, which caused problems when the decisions were effectuated. The letter, however, contains no mention of a concern regarding pasting these links into a decision.

With regard to Judge O'Bryan's decision writing, Judge Stults stated that Judge O'Bryan had taken it upon himself and volunteered to review and write the on-the-record decisions to help process the disability cases awaiting action in the Oklahoma City hearing office. Further, Judge Stults told the Subcommittee that Judge O'Bryan "was good at it." Judge Stults explained that Judge O'Bryan reviewed "raw" cases that had not undergone any review or preparation by office staff, which made them more difficult to review. He said that allowed the other ALJs in the Oklahoma City hearing office to divide up the remaining cases that had been prepared by office staff for ALJ review, which enabled those judges to act more quickly. Judge Stults explained that the Oklahoma City office lacked adequate staff to properly support its ALJs, so Judge O'Bryan's actions provided welcome assistance to the other judges.

Interview of Judge O'Bryan. Judge O'Bryan was also interviewed.[74] When asked about his unusual approach to deciding cases, he explained that a lot of what was seen by the Subcommittee was the result of a particularly busy period between 2006 and 2009. "I did an awful lot of cases in those years," said Judge O'Bryan, referencing the years he often decided more than 1,800 cases.

It was in this time period, he went on, that the agency developed a significant backlog, but "did not have adequate resources to do cases." To play his part and help, the judge did as much of the work he could to free up others. "Rather than utilize personnel, I would review raw cases to see what could be allowed on-the-record," he explained. The term "raw cases," he said, referred to cases that no one had yet looked at or

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[73] Subcommittee interview of Oklahoma City Hearing Office Chief Administrative Law Judge Douglas S. Stults (8/31/2012).
[74] Subcommittee interview of Judge Howard O'Bryan, (8/31/2012).

prepared for a judge. He added, "I was the only one who would agree to review raw cases."

"I was trying to keep up the number of dispositions for the office," Judge O'Bryan went on, noting, "I wrote all of them myself." He was able to dispose of so many cases during this time, he said that SSA began shipping him cases from around the nation. He said that, at one point, he was sent 500 cases from Little Rock, Arkansas – equivalent to a single judge's workload for a whole year. "I was asked to review those cases to see if they could be allowed," he said. According to Judge O'Bryan, he was able to get through so many cases, that SSA sent him huge blocks of cases from such cities as Houston, Texas; Atlanta, Georgia; Baton Rouge, Louisiana; Greenville, South Carolina; and Yakima, Washington. He said he also received cases from Missouri.

Asked how he was able to get through so many cases from other states in such a short period of time, Judge O'Bryan explained that he only handled the cases that he thought should result in the award of disability benefits, and sent the rest back to the states they came from for hearings. He explained that in a typical case, the possible denial of benefits mandated a hearing and written opinion, which took more time than writing an opinion granted disability benefits based upon the records already in the case file.

According to Judge O'Bryan, he saw plenty of cases that did not require much time to decide. "You could take one look at them and see the person was dying," he said. Judge O'Bryan explained as well that he did not "always need an ME [medical expert], because you can read the medicals as well as a medical advisor."

When asked about the problems with his opinions, he defended his approach as acceptable practice. He stated that SSA encouraged the way he wrote his decisions, and claimed that he rarely ever had decisions reversed by the Social Security Appeals Council. "I'm very, very careful about what I put into decisions," he said.

Regarding the frequent use of "etc., etc., etc." when identifying a claimant's conditions, Judge O'Bryan explained it was for times when a person has, "a whole bunch of other things wrong with them and I didn't feel it was necessary to list them. I was just trying to rule on the major impairments."

On the issue of inserting images from medical records in place of describing the claimant's medical conditions and analyzing them, he said that his technique helped him get the opinions done more quickly. "In spite of the numbers," said Judge O'Bryan, "our office was still

running low in the region. In order to help get these out, I reviewed for OTRs [on-the-record opinions]." And so, he said, "I used a little different technique. The rules don't say how you have to set up a case." Judge O'Bryan rejected the notion that he failed to include case-specific analysis in his opinions, saying, "I thought I put analysis in. I really did … I would cut and paste images followed by rationale."

Judge Stults supported Judge O'Bryan's statements and noted that Judge O'Bryan's opinions "passed muster with the Appeals Counsel," meaning they were never remanded for legal insufficiency. Judge Stults asserted that pasting images into ALJ opinions was a widely-used technique by many ALJs, including himself, after SSA switched to electronic medical files in 2006.

Judge O'Bryan also pushed back at first when asked about why he used boilerplate language in his opinions, explaining: "It wasn't boilerplate at all. … I may have used similar language." He later conceded, however, "I may have taken a few shortcuts. I maybe should have written them better." But with the time constraints on ALJs, he said, "You do whatever you can do to make them go. You try to get through them the best you can." Later in the interview, he said: "In the past we all used boilerplate. At one time, the agency encouraged boilerplate. We could cut and paste and had a ball doing it, because it saved so much time."

When asked about how much time he spent deliberating on each case, Judge O'Bryan said it varied. Some cases, he said, he "can review in a matter of a few minutes. You can take one look and know they meet a medical listing." For others, he said, "I've spent an hour or two, some took days," while others took as little as 30 minutes. Asked about a typical case, he said he typically took one or two hours to review it and reach a decision. The reason he could proceed so quickly for the cases decided between 2006 and 2009, he said, was because he chose cases that were "clear cut, no questions about them."

"In the end," Judge O'Bryan concluded, "I feel I have made the right decisions." Judge Stults told the Subcommittee that he was sure "Judge O'Bryan looked at every page of every file."

Judge O'Bryan told the Subcommittee that he no longer produces decisions at the rate he did during the time frame, 2006 to 2009. One reason may be that SSA now limits disability ALJs to deciding no more than 1,200 cases per year. Judge O'Bryan indicated that in 2010 and 2011, he decided 1,343 and 1,164 cases per year, respectively. He also noted that in 2012, to date, he had decided 502 cases. In addition, Judge Stults told the Subcommittee that Judge O'Bryan no longer writes his own decisions, reviews raw cases, or decides cases sent from other

states; instead Oklahoma City SSA staff writers prepare the decisions for Judge O'Bryan to approve and sign. It is unclear whether this arrangement was established in response to the September 2011 letter criticizing the poor quality of the judge's opinions.

Another relatively recent change is that, according to Judge O'Bryan, he now approves the award of disability benefits in only about 54 percent of the cases he reviews, which is close to the SSA average for disability ALJs. Judge O'Bryan continues to decide disability cases, and continues to be one of the most active judges in the Oklahoma City hearing office.

During the course of the investigation, under the random case selection process used by SSA, the Subcommittee reviewed 16 opinions issued by Judge O'Bryan, all of which raised concerns about the poor quality of the case description and analysis. Several examples follow.

Oklahoma Case 111. In 2007, Judge O'Bryan awarded disability benefits to a truck driver who alleged a back-related work injury from September 22, 2005. The claimant's case file contained records from several doctors indicating the man could return to work, one of whom wrote that he could return to work with "no restrictions," but Judge O'Bryan found him disabled. In his opinion, the judge wrote that the claimant could do only work that was "less than sedentary" and utilized the formulation of "etc., etc., etc.," for which he claimed support from "various doctors."

On September 22, 2005, the claimant sustained a work injury after falling from the top of a railroad car ladder. Records from five hours after the incident state: "Patient states: 'Slipped coming down hand rail injuring right shoulder, right knee and neck.'" The claimant also told the doctor he had previously injured his shoulder and knee, and had: "Two surgeries [on his] right shoulder and arthroscopy [on his] right knee."

Medical notes from October 6 and 14, 2005, several weeks after the injury, show the patient had returned to work with light duty restrictions. According to the records, "Patient has been working within the duty restrictions. He states that his right knee is fine, but his right shoulder is still hurting."

He had neck surgery in December 2005 and shoulder surgery in March 2006, followed by rehabilitation until June. Throughout the first half of 2006, the claimant's medical records show steady progress toward recovery, ending with his clearance to return to work with no restrictions.

These records, starting from January 24, 2006, following his neck surgery but prior to his shoulder surgery, showed him "temporarily totally disabled," but that, "His neck and right-arm radicular pain have abated … [the patient] is very pleased with the results of surgery."

Records from February 28, 2006, completed by same treating physician, show "the patient has had excellent results from his surgery, and, at present, has no symptoms of an active radiculopathy or myelopathy." The surgeon also fully cleared him to return to work at this point, stating, "the patient can return to gainful employment at any time. He will be on a 25-pound permanent weight [restriction] in lifting, bending, pulling, tugging, etc. The patient tells me that he has decided not to return to work as a truck driver in the future." His doctor instructed him to "continue his home exercise program and is to stay active."

In early March, prior to shoulder surgery, the claimant indicated he was eager to proceed, explaining to his doctor, "He is left hand dominant. He thinks he can protect the right shoulder and continue to be fairly functional." On March 21, 2006, the claimant underwent the shoulder surgery. Six days after the surgery, he told his orthopedist, "I feel great." The orthopedist wrote in response, "I can tell a big difference. He has no pain or popping reported. His wounds are benign. He is only six days following the surgery. Physical therapy for a couple of weeks recommended."

A follow up appointment with an orthopedist on May 22, 2006, reported: "Range of motion [in his shoulder] is steadily improved. He is doing very well. … He is reporting no pain …. The patient has reached maximum medical improvement. He is released today without restrictions in regards to his shoulder. He will take over the counter anti-inflammatories on an as needed basis." Regarding his "Work Status" the doctor wrote, "No restrictions." No medical records exist in the file after this date.

Seven months later, the claimant filed for SSDI benefits. His initial application was denied at the DDS level on February 21, 2007, which the agency explained was because of conclusions made by two separate doctors at evaluations from February 6, 2007. The agency explained:

> We have determined your condition is not severe enough to keep you from working …. Although you have pain and discomfort in your neck and shoulder, you can move them well enough to do some types of work …. We realize that your condition keeps you from doing any of your past work, but it does not keep you from doing other work which is less demanding.

He requested reconsideration on March 12, 2007, explaining, "I am unable to work." In May, he filled out a form for the agency explaining his limitations, adding at the end: "I can not go back to work, I'm on pain meds, I've got restrictions for life and I've not had any income since 9/22/05 – because of that I'm not real happy about you all keeping me from receiving SSA disability." DDS again denied benefits under reconsideration, and he appealed to have his case heard before an ALJ.

The claimant's attorney followed up by writing directly to an SSA senior attorney working with the ALJs in the ODAR office in Oklahoma City on November 9, 2007, saying: "[D]ue to [the claimant's] age and his medical condition, I would request that you as a Senior Attorney please review the file for the possibility of an on the record favorable decision."

ALJ Review. On December 26, 2007, Judge O'Bryan issued a sparsely worded "on-the-record" fully favorable decision for the claimant, awarding him SSDI benefits. Despite having been medically approved to return to work with no work-related residual impairment by his treating physician, Judge O'Bryan found the claimant disabled because of: "Other and unspecified arthropathies (7160), etc., etc." and "Disorders of back discogenic and degenerative (7240), etc., etc., etc."

He found that the claimant: "is functional below the sedentary level for any sustained, continual or regular activity." In the section explaining his findings, he cut and pasted various portions of medical evidence from the case file into his decision, one of which was a consultative examination used to deny the initial claim. He then wrote: "Various physicians, treating and non-treating, have written that the claimant suffered from various medical problems and that the claimant has significant work restrictions."

Judge O'Bryan concluded: "Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform."

Oklahoma Case 134. Here, a 52 year-old man applied for SSDI and SSI benefits alleging osteoarthritis in his knee, legs, and back, as well as depression. The claimant asserted that he was becoming "more and more house-bound," "had no interest in anything," "could barely function," and could not drive. In October 2007, Judge O'Bryan made a fully favorable award of benefits after an on the record review and determined no hearing was needed. He awarded benefits beginning in November 2004, finding the claimant's condition met the criteria for the following grid listings: 12.04 (affective disorder); 1.04A (spine

disorder); and 12.06 (anxiety disorder), "etc." The opinion failed to acknowledge or discuss evidence in the case file of possible malingering and a higher activity level by the claimant than he admitted. In addition, his decision failed to discuss any of the specific elements required to meet each listing or to identify the evidence of record that proved the listings were met.

Evidence of Physical and Mental Health. Despite the claimant's subjective assertions that he could barely function and was house-bound, the evidence of record contained hundreds of pages of medical records from the Veterans Affairs (VA) clinic chronicling treatment between August 2004 and October 2006. The medical records documented the claimant was physically active in a number of ways. Further, in a December 2006 evaluation, the physician examining the claimant reported actions by the claimant which countered his claims of chronic pain.

The majority of the claimant's records related to his weekly therapeutic Hepatitis C support group notes. These records documented the claimant engaged in a wide variety of physical activities, as well as tracking his mental health.

In December 2004, a psychologist noted the claimant "retold his story of losing his job about 5 weeks ago and how much struggle he has been having over this." The physician notes indicated "he is extremely anxious over this because of its cyclic nature and for what he was terminated over." The claimant reported that he was "drawing unemployment and he has enough money saved to get by on." The psychologist noted the claimant's responses were not, in fact, reflective of someone "extremely anxious," but were, "suggestive of an individual in a very relaxed state and low [an]xiety." As the session concluded, the psychologist "asked [the claimant] how he felt and he said 'great.'"

In January 2005, the claimant reported that he had "started going to the [health club] and swimming laps twice a week now." The claimant stated: "I feel good but it wears me out quite easily." At the same session, the claimant discussed going back to work, but "stated that he frequently will procrastinate when it comes to looking for a job which he has also done in the past." The next month, February 2005, the claimant stated that "his mornings are quite full every day and he is slowly trying to expand into the afternoons." He also discussed that he was "concerned that if he goes on a job interview in the afternoon that he will not be up to his full potential and not make a favorable first impression." Therefore, the therapist "discussed the possibilities of moving the interviews to the morning or reducing his morning activities

for the day of the interview to preserve more energy for later on in the day."

At a meeting on April 14, 2005, the claimant "was very supportive of other group members facing crises" and "shared that he has found exercising in the VA's health wing very beneficial." He also "reports that he continues to exercise and to spend time volunteering." The next week, on April 21, the claimant reported "he continues to look for employment and participate in [the] upward bound program," which provides support for individuals preparing to attend college.[75]

On May 5, 2005, the claimant expressed that "he experienced two occasions where he felt somewhat depressed," but "he was able to challenge his negative thoughts and reframe his situation, thus elevating his mood and continuing to move forward." He also "reported that he continues to stay very active and revealed that he has applied for employment at the VA." The therapist reported the claimant's condition had improved. On May 12, 2005, the claimant reported "that he continues to volunteer at the VA, participate in the Upward Bound Program, and to challenge his negative thoughts." By May 19, 2005, the claimant stated "he has gotten much of his strength and energy back following [his Hepatitis] treatment" and "continues to volunteer at the VA."

On June 9, 2005, the claimant "reports that he has been feeling good and has made progress on his home projects" and gave a good deal of advice during today's group." The next week, on June 16, the claimant had a "bright affect with upbeat mood" and "reports that he continues to volunteer 25 hours per week, but he is too tired to look for a job." On June 23, the claimant "pointed out that his schedule is quite busy." The next month, on July 19, 2005, the claimant was seen for a rash on his arms "likely starting after exposure to outdoor plants." He reported that "he is doing well and discussed his physical activity as well as active participation in VA programs such as volunteering and Upward Bound program" on August 11, 2005. At the same time, blood tests confirmed prescribed treatment was successful, and no sign of Hepatitis C was detected in his RNA, even six months after treatment.

On August 29, 2005, the claimant reported to his counselor that his current leisure interests were "working with Upward Bound, exercise, work on the house, movies, reading computers, volunteering, and water aerobics." In September 2005, the claimant "denies any significant neck or low back pain but says that he is involved with therapeutic recreation

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[75] United States Department of Education, Upward Bound Program, http://www2.ed.gov/programs/trioupbound/index.html.

5 times a week [at the VA] doing comprehensive abdominal [exercises], stretches as well as he [is] personally doing swimming [exercises] at the local [gym] 5x/week." The progress notes repeatedly stated the claimant had "a bright affect with upbeat mood."

Records throughout 2006 continued to document the claimant's active lifestyle, which included pottery, drumming, a walking-stick making group, and yoga classes, as well as a college-level course. In January 2006, the therapist noted the claimant "is positive and encouraging of others and appears to benefit from the social interaction" of his group." In the spring of 2006, he stopped attending his Hepatitis support group, but instead participated in a weight management support group. In July 2006, the claimant developed a "rash [on his] lower legs after he went out on his farm."

In late summer 2006, the claimant stopped exercising and complained to his physician of fatigue and liver pain. On September 21, 2006, the claimant's physician confirmed the claimant's pain was "NOT liver related." The physician noted "we cured his virus" and "[claimant] is clearly poorly conditioned cardiovascular wise and needs to start exercising to reverse his fatigue rather than obsess about 18 months ago. He need not return to liver clinic."

In the same month, October 2006, the claimant applied for disability.

Potential Evidence of Malingering. In December 2006, a physician reviewed the claimant, whose chief complaint was "chronic bilateral knee pain, left ankle pain, neck pain, and low back pain." The physician noted the claimant "ambulates with crutches" and "has chronic pain behaviors." He stated the claimant "exhibits chronic pain with attempts to manipulate the shoulders." The physician noted, however, the claimant acted much differently when he got to the parking lot. The doctor stated he:

> observed the patient in the parking lot. He drives a small traditional Volkswagen. He was able to get into the Volkswagen without difficulty. This required flexing his knees to at least 90 degrees. He fastened his seat belt and turned his head 90 degrees to the right to look over his right shoulder to back out. He had no trouble using his left shoulder to slam the car door.

DDS Review. The DDS determined the claimant failed to meet program qualifications and wrote in its explanation of determination:

> 52 year old male [complains of] knee problems, hepatitis C and mental problems. He has the residual functional capacity to lift/carry 20 lbs occasionally, 10 lbs frequently and to stand/sit/walk 6 hours in an 8 hour workday. One of his past relevant jobs was as a retail sales worker where he lifted 50lbs occasionally. He cannot do the job as he describes it. In the DOR the job is Sales Attendant, 299.577-010, which carries a light strength rating. He has the residual functional capacity to do this job as it exists in the national economy.

DDS affirmed the denial on reconsideration. The claimant retained an attorney and requested a hearing before an administrative law judge.

Judge O'Bryan's Decision. ALJ O'Bryan made a fully favorable decision for the claimant on the record without holding a hearing – a practice reserved for cases that are obvious and do not require hearings. Judge O'Bryan cited no specific evidence and performed no analysis, but found:

> The severity of the claimants affective (mood) disorders (2960), anxiety related disorders (3000), hepatitis C, disorders of the back discogenic and degenerative (7240), knee and leg problems, obesity and hyperalimentation (2780), etc., etc., etc., meets the criteria of section(s) 12.04, 1.04A, 12.06, Social Security Ruling 02-01p, etc., etc., etc., of 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.152(d)).

Judge O'Bryan awarded benefits based on the claimant's meeting the grid listings for anxiety and affective disorders, as well as a spinal condition, but identified no medical evidence from the record that supported his decision. Instead, he just stated "etc.," specifying only that "various physicians, treating and non-treating, have written that the claimant suffered from various medical problems and that the claimant has significant work restrictions."

Judge O'Bryan also dismissed the doctors at the DDS-level who denied the claim, stating:

> The State agency medical opinions are given little weight because other medical opinions are more consistent with the regard as a whole and evidence received at the hearing level shows that the claimant is more limited than determined by the state agency consultants. ... The Administrative Law Judge affords greater weight to the opinion of the examining (nontreating) source. The opinion is well supported by

> medically acceptable clinical and laboratory findings and is consistent with the record when viewed in its entirety. ... The State agency did not adequately consider the entire record, including the subjective complaints and other allegations of the claimant.

The ALJ did not identify what new medical evidence proved this statement, or the opinion of the examining physician he relied on to award benefits.

Oklahoma Case 144. In 2009, ALJ O'Bryan awarded disabled widow's benefits and SSI to a claimant for affective mood disorders and anxiety disorders. While an award of benefits may have been warranted, in drafting his fully favorable decision, Judge O'Bryan included many of the problematic features described earlier. The opinion also failed adequately to address significant evidence of drug and alcohol abuse, as well as the significance of claimant's past work record. Finally, the case file contained few, if any, medical records to support the claimant's allegation of disabling anxiety.

In her application, the claimant wrote she became disabled in August 2003, but also that she worked until 2004. According to her paperwork, she quit her job, "because I have been taking care of my husband who recently passed away." After her husband, who was also on disability, died in 2008, she decided to apply for disability benefits even though she had been denied three times in the past. On the application she wrote: "So when he passed in August 12, 2008, I'm left in an awful place, so I thought – now its time – its proper, its my right to apply for disability – which I am doing again and again."

One key issue was that the claimant did not have many medical records available to support her claim. A case manager from a mental health clinic noted on May 10, 2009, that the claimant: "is in a difficult spot without having ample records to back her claim of being disabled due to mental illness. [The claimant] has been denied three times and from the way she puts it, her attorney is reluctant to take her case at this point."

Her application was denied at the first two levels of review, and she appealed the case to appear before an administrative law judge.

Claimant's Work History. On her Request for Reconsideration – a form filled out by those denied benefits at the DDS level – the claimant said she worked briefly in February 2009 as a waitress, six months after filing her original disability application. The job did not last more than a few weeks, but raised questions about her ability to work. Asked on the form to explain why she requested reconsideration, she wrote:

> I got turned down – I am broke – I attempted to work. Worked 9 days 1/30-2/16. Couldn't cope – small diner – I could only handle about 2 tables – they weren't happy with me – and I couldn't handle it.

On another form, she was asked if there was any change in her disability since she applied in August 2008, to which she replied "yes." She elaborated: "When you denied my disability – I had no money – I attempted to work, started 1/30/09 – quit 2/16/09. Diner waitress – too nervous – couldn't cope. … Small diner, they all said I'm too stressed – need to improve – need to get faster, I couldn't concentrate. Getting 2 tables overwhelmed me."

A medical evaluation undertaken at SSA's request just a few months earlier, in December 2008, noted that the claimant had indicated she had "worked for many years despite … anxiety and polysubstance abuse." The opinion awarding benefits contains no analysis of the claimant's work history to determine whether, in the past, she was able to work despite experiencing anxiety and what, if anything, had changed.

Evidence of D&A Abuse. In addition, the claimant's file contained significant evidence that the claimant had a serious drug and alcohol addiction. The presence of drug or alcohol abuse requires the decision maker to determine whether the claimant's drug addiction or alcoholism is a contributing factor material to the determination of disability. The decision maker must determine the claimant would be disabled independent of their drug or alcohol addiction.[76] The records reflect that various doctors struggled to determine whether the addiction was related to her depression and anxiety, and whether she would suffer those mental impairments if she discontinued her drug and alcohol dependence, as the following demonstrates. Judge O'Bryan's opinion, however, simply concluded this information was "not material," failing to offer any explanation as to why.

The claimant was referred by the state DDS office for a psychological exam in October 2008, at which the doctor reported that she had been drinking heavily and taking her deceased husband's anxiety medication, Xanax.

> [The claimant] stated that she drinks beer, "more these past two years," estimating that on average she drinks, "eight

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[76] See 20 CFR §416.935, "How we will determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability," http://www.ssa.gov/OP_Home/cfr20/416/416-0935.htm.

> beers a night, up to three cases a week." She considers herself to have been a problem drinker, "from 2004 until the present time."

During the same evaluation she "reported that she has been taking Xanax all of her life," adding "I take my husband's, .5 mg. every day."

One of the agency doctors, writing a "case analysis" on December 12, 2008, asked another doctor, "Do you agree DAA [drug and alcohol abuse] material?" She added this case was "[a] bit complicated. Get 3rd party [assessment] from the neighbor who sees her often. Then we'll deal with the [alcohol] use. Right now I can't say DAA because I don't know if sober she would do better."

A subsequent evaluation by a DDS consultant on December 31, 2008, raised similar questions, saying the claimant: "has suffered anxiety with panic attacks for many years but has not sought [mental health] treatment in about 5 years and no [medical records] since 2005 exists. [The claimant] worked for many years despite the anxiety and polysubstance abuse. [The claimant] has long [history] of [alcohol] dependence and drug addiction, she continues to drink to excess daily."

The report noted that drugs and alcohol could be contributing to her condition: "Many of the limitations noted by the Clmt and 3rd party could be related to the [alcohol] effects and/or some depression." Whether drugs and alcohol was a primary cause of the woman's disability remained a pertinent, but unsettled, question: "[T]he claimant admits to daily heavy [alcohol] use but we do not have evidence to support establishing DAA as material.... There is no evidence to indicate she functions well or better sober."

On February 2, 2009, mental health clinic records state that the claimant had "been on Xanex for 2 years. She reports being prescribed to take it 3 per day in 2000 to 2003, and was taking her husband's prescription recently before his death in 8/09. She ran out of medication about 2 weeks ago, and has resorted to alcohol to curtail her anxiety." The doctor also noted: "She has some awareness that her Xanex use is abusive," and "She is dependent on her Xanex." The clinic records also indicate alcohol was a problem: "She was arrested in the 80s for a DUI. In 2004 she moved out of her husband's house and got a DUI."

In the course of the 2009 evaluation, according to the psychologist, the claimant said: "I have and have had anxiety for 10 years. I was taking my husband's Xanex, but he died and now I don't have any. I need to get out of the house and go to work." The psychologist concluded that her behavior may be manipulative and drug-seeking: "[S]he is

dependent, and will use others to get her needs met, she is addicted to Xanex."

Judge O'Bryan Opinion. DDS denied the claimant's initial application and request for reconsideration. On appeal, Judge O'Bryan found the claimant's disability began on August 12, 2008, the day her husband died. He later amended the disability onset date to February 12, 2008, six months prior, though the change was not explained.

His fully favorable decision, rendered "on-the-record" and without a hearing, failed to adequately acknowledge the evidence of past work and drug and alcohol abuse. With respect to the latter issue, the decision simply said, without further explanation: "The claimant's substance use disorder(s) is not a contributing factor material to the determination of disability."

Judge O'Bryan found the claimant disabled under medical listing 12.04 for affective disorders. Later in his opinion, he explained the listing was met because, "The paragraph A criteria are satisfied because the claimant has 12.04, 12.06, 12.09, etc." This explanation is difficult to understand, but may amount to a circular argument in which "12.04 was met because the claimant has 12.04." The 12.04 listing requires an individual to have several specific symptoms, such as an inability to sleep, appetite disturbance characterized by weight loss, feelings of guilt or worthlessness, or hallucinations, with resulting factors that limit the claimant's abilities. Within his opinion, Judge O'Bryan not only did not discuss whether the claimant had any of the required symptoms, he inserted images from a consultative exam on December 31, 2008 that found the claimant did *not* meet the requirements of listing 12.04.

The remainder of the opinion failed to identify any symptoms experienced by the claimant or to discuss the medical evidence. Rather, it consisted only of reproductions of portions of the claimant's application, which appear to have been copied and pasted into the document, primarily a several-page October 2008 consultative exam record (referenced above). This record, however, had also been submitted to the DDS examiner who referenced it specifically and rejected it as unreliable evidence, concluding: "Medical evidence does not show any other impairments which keep you from working." The DDS examiner then denied the request for benefits. The O'Bryan opinion simply does not explain why he reached the opposite conclusion.

Oklahoma Case 146. In 2010, Judge O'Bryan awarded a 43 year-old woman SSDI and SSI benefits effective June 1, 2007, based on depression and diabetes. The evidence of record, however, documented

consistent noncompliance with her prescribed medical treatment, which can disqualify someone from receiving benefits, as well as evidence that the claimant had worked after her alleged disability onset date.

The claimant applied for benefits on February 26, 2009, disclosing in her application that she was experiencing financial and marital difficulties: "My husband and I are talking about possibly reconciling. I may be moving in with my mother because I can't afford to keep my apartment." In addition to alleging depression and diabetes, she claimed to suffer from Bell's palsy and repeated MRSA infections.

Her application was denied by DDS on June 3, 2009, and again under reconsideration on October 20, 2009. DDS explained in its denial that since she was still working and earning more than was allowed, her medical condition did not qualify her for disability. The agency provided the following explanation for denying her reconsideration request:

> The medical evidence shows the following: While you are treated for Bell's palsy, medical records indicate this is not a disabling condition. Your MRSA has responded to treatment and will not keep you from doing all types of work. While your depression and anxiety keep you from doing stressful and complex types of work, you can do simple, routine work.
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> Although you are experiencing pain in your back, shoulders, knees, and your legs from neuropathy, you are able to sit, stand, bend and walk well enough to work. Your diabetes could be controlled by medicine and diet if you would follow prescribed treatment. Medical evidence does not show any other impairments which keep you from working. On further review of the evidence and your description of the job you did as a clerical worker for some time, evaluation reveals that you are able to return to this job.

On March 10, 2010, ALJ O'Bryan reversed the previous denials, ruling fully favorably for the claimant. His opinion failed to take into account the woman's long history of noncompliance with her prescribed treatments for diabetes as well as evidence the claimant worked a full-time job for a three-month period following her application for benefits. Like many of his other decisions, this one contained little original analysis. Rather, in its place he cut and pasted unexplained computer screen shots into the decision from the claimant's records.

Noncompliance with Prescribed Treatment. Over a period of several years, a number of doctors prescribed various treatments for the

claimant's conditions, but she often failed to comply with them. SSA rules require a person to follow their doctor's prescribed treatments, stating: "If you do not follow the prescribed treatment without a good reason, we will not find you disabled or, if you are already receiving benefits, we will stop paying you benefits."[77] Her medical records showed not only that the claimant was non-compliant, but possibly willfully so.

On November 25, 2006, a physician made the following stark assessment of her condition:

> Diabetes mellitus type 2, uncontrolled, due to patient noncompliance. She refuses a diabetic diet. Cover with Humalog and start metformin but I seriously doubt this will be of benefit to her. She constantly drinks Coke whenever she can. She has no insight to her disease process or is not willing to have insight to it .... She is uncontrolled today and is unwilling to assess her needs for insulin control or management.

Three months later, on March 11, 2007, the same physician stated in medical notes that the claimant's Type II diabetes remained uncontrolled:

> Patient very noncompliant with treatment. When told I had a magic wonder drug that would help her, she said I don't want drugs, I want food. She is not willing to comply with diet nor to assist with her therapy. I will add Jenova but I doubt this is going to have a significant effect if she doesn't comply with diet. ... She has no retinopathy, nephropathy. She is grossly obese.

A medical note dated August 14, 2008 stated: "[Claimant] admits to dietary noncompliance." On September 15, 2008, the claimant's treating physician recorded her weight at 284 pounds and diagnosed her with "uncontrolled and noncompliant with diabetes and hypertension," adding she "admits to noncompliance with sweets, Cokes, and foods." He further explained:

> We discussed the importance of compliance with micro and macrovascular complications. Recommended a healthy diet, which she is very resistant to and actually leaves tearful today because of that...She needs to monitor her sugars.

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[77] 20 C.F.R. §404.1530. Need to follow prescribed treatment, http://www.ssa.gov/OP_Home/cfr20/404/404-1530.htm.

The same pattern continued. A year later, on August 11, 2009 the claimant's physician's noted the claimant was "quite noncompliant with diet-she does take [medications] as directed. Poor control of DM 2 [Type 2 Diabetes]. Discussed need to make good food choices or [number]s will not improve."

Despite this extensive evidence in the claimant's file, Judge O'Bryan failed in his opinion to acknowledge or address the claimant's noncompliance with dietary restrictions, failure to control her blood sugar, and failure to take her medication after 2007.

Evidence of Work. A second set of issues involved evidence that the claimant was working at the time she requested the ALJ hearing, contrary to her claim that she was disabled.

On May 26, 2009, a doctor performing a consultative examination wrote: "She reported that she is currently working a full-time job, so she goes to work, and when she is home she cleans or runs errands." On July 23, 2009, she disclosed to the SSA: "I did work for 3 months as a Cashier at [a] store since filing for disability. It was very difficult to be on my feet for 7-8 hours a day and to perform the multitude of tasks expected of me. I didn't get along well with management because they cared more about profits and percentages than about people. They did not care about my health."

Such work and activities are inconsistent with the claimant's allegations of disability and should have been addressed by the ALJ through questioning at a hearing, but Judge O'Bryan instead decided the case by examining her case file and without holding a hearing.

In his opinion, Judge O'Bryan found the claimant to be disabled because of: "Primary: AFFECTIVE MOOD DISORDERS (2960), etc., etc., etc., Secondary: DIABETES MELLITUS (2500), etc., etc., etc." To support his decision, he included several screenshots of medical records, one of which said: "Claimant can adapt to a work situation." Then he wrote: "Various physicians, treating and non-treating, have written that the claimant suffered from various medical problems and that the claimant has significant work restrictions." This portion of the decision never named the physicians, the medical problems, or the work restrictions.

V. PROBLEMS WITH MEDICAL-VOCATIONAL RULES THAT ALLOW FOR "GRIDDING"

When claimants apply for Social Security disability benefits, they can receive an award in one of two ways. The first, which has already been discussed, is to meet the criteria for a "medical listing." If a claimant meets the medical listing criteria, the disability application process ends at Step Three with an award of benefits. The second way for claimants to receive an award of benefits occurs at Step Five of the process if they meet the requirements of the "Medical-Vocational Rules."

The Medical-Vocational Rules apply to claimants who do not meet the criteria for a medical listing, but still have a severe enough impairment that they may not be able to work. To help DDS examiners and appellate personnel determine in these circumstances when someone is disabled, promote consistent decision making across the agency and the country, conserve resources, and increase efficiency, SSA has developed a grid incorporating a number of variables providing guidance on how to handle disability claims that reach Step Five.[78] When a person is analyzed under the Medical-Vocational Rules to determine whether they are disabled, it is commonly referred to as "gridding."

More than 80 grid options apply to claimants, with variables that include a person's age, level of education, past work history, ability to speak English, and his or her "residual functional capacity" – known as an RFC. An RFC reflects an individual's capacity for engaging in "substantial gainful activity," or SGA. Persons who engage in SGA cannot be considered disabled. RFCs can range from a person being able to engage in "heavy" work on the high end to "sedentary" and "less than sedentary" work on the low end.

In the cases examined in the investigation, a large number of claimants were awarded disability benefits via "gridding." While some of these cases appear to have correctly applied the gridding rules, others raised questions about whether they were used as intended. This finding was confirmed by the Office of Appellate Operations (OAO), which found

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[78] From the introduction to the Medical-Vocation Rules: "The following rules reflect the major functional and vocational patterns which are encountered in cases which cannot be evaluated on medical considerations alone, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (*i.e.*, age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work." http://www.ssa.gov/OP_Home/cfr20/404/404-app-p02.htm

that hearing offices decided cases at Step Five versus Step Three at about a 4 to 1 ratio.[79]

One key issue involves how the grid rules treat older workers. Under the grid rules, SSA assumes a person becomes significantly less able to work once they reach the age of 50, and even less capable once they reach 55 or 60. As persons reach those specified ages, the grid rules are progressively less likely to find them able to work and more likely to be disabled. For example, under the grids, a 49 year-old that can perform sedentary work, has less than a high school education, and whose past work is considered unskilled is found "not disabled." *See* 201.18. In contrast, a 50 year-old that can perform sedentary work with the same education and past work experience is "disabled." *See* 201.09. Because of the way the rules are designed, it is possible to find someone "not disabled" on the day before their 50th birthday, but "disabled" on the next day with nothing changed but their age.

In a large number of cases reviewed by the Subcommittee, claimants alleged their disabilities began before the ages of 50, 55, or 60, but had RFCs suggesting they could work. In some cases, ALJs adjusted the onset date of their disabilities to the date on which they turned one of the ages specified under the grid rules and found them to be disabled. This practice is known as "amending the onset date." In fact, this practice is encouraged by the agency in its rules and regulations. In a section entitled, "Your age as a vocational factor," the agency says:

> We will not apply the age categories mechanically in a borderline situation. If you are within a few days to a few months of reaching an older age category, and using the older age category would result in a determination or decision that you are disabled, we will consider whether to use the older age category after evaluating the overall impact of all the factors of your case.[80]

The intent of these rules is to give claimants the benefit of the doubt in "borderline" situations.

Oklahoma Case 170. DDS awarded SSDI benefits to a 60 year-old woman alleging arthritis in her hip, PTSD, and incontinence. While her medical records reveal some evidence of mental or physical impairments, she received treatment for both and was physically active. She was nevertheless approved for benefits under the "gridding" rules

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[79] Office of Appellate Operations, Executive Director's Broadcast, Vol. 3, Special Edition – Quality Review, January 13, 2012.
[80] 20 C.F.R. §404.1563. Your age as a vocational factor, http://www.ssa.gov/OP_Home/cfr20/404/404-1563.htm

based upon her age and work experience. The claimant was 59 years old when she applied, and her application was denied. Within days of her denial she turned 60 years old and was then approved for benefits several months later under program rules. The decision to award her benefits did not address the contradictory medical evidence in the case file.

Application Denied at DDS and Approved upon Reconsideration. The claimant applied for benefits on September 3, 2008, alleging a disability beginning on October 20, 2006. For several years after her alleged onset date, however, the claimant's records showed her to be physically active and even working three days a week at a health club as a receptionist. On September 30, 2008, DDS denied this claim, making the following determination:

> We have determined that your condition is not severe enough to keep you from working. ... The medical evidence shows the following: While you have been treated for arthritis and incontinence, this condition has not seriously affected your ability to work. Although you are experiencing pain in your right hip, you are able to sit, stand, bend, and walk well enough to work. Although you sometimes experience PTSD, there are no sign of a severe mental illness which keeps you from working. Most of the time you can think clearly and carry out normal activities. Medical evidence does not show any other impairments which keep you from working. Based on your description of the work you performed as a cashier for several months, evidence indicates you are capable of doing this type of work as it is generally performed.

When the claimant applied for reconsideration on November 7, 2008, she had just recently turned 60 years old. DDS reviewed the case file once more then reversed itself on February 18, 2009, finding her disabled as of October 20, 2006. The explanation accompanying the reversal said the claimant now met the rules for disability based on vocational factors, specifically Grid Rule 202.06. This rule states an individual is disabled if they have a residual functional capacity for no more than light work, are of advanced age (60 years or older), and are a high school graduate with no skilled work or transferable skills. DDS found, "The claimant can not return to [prior work]. The claimant's age and mental limitations limit the claimant's ability to transfer skills. The claimant's vocational profile matches vocational rule 202.06 which directs a decision of disabled."

Evidence of Increasing Health and Work Activity The DDS award of benefits did not take into account the records in her case file

demonstrating the claimant's physical activity, lack of incontinence, and mental health. Over a period of several years, the claimant had complained of chronic hip pain as well as depression, but received treatment for both. On August 1, 2006, the claimant was seen by a physician at a Department of Veterans Affairs (VA) medical center as a new patient. Physician progress notes from that date state: "Here for first time visit. Interested in getting care and help with medications." The claimant's past medical history noted problems with hypertension, high cholesterol, and an acne-like rash on her face. The medical notes from this visit also stated that she "feels depressed, tired, stressed, lack motivation, does not want to be around people." There is no mention of PTSD. Reports from all other body systems were determined to be normal. The gynecology section noted the date of her last mammogram and pelvic examinations and noted she had never received a bone density scan, but did not mention any complaints of incontinence. Her social history noted that she was retired.

Her doctor recommended a treatment plan that consisted of four items: (1) a change in her blood pressure medication; (2) a referral to a dermatology clinic for her rash; (3) a referral to the gynecology clinic for a bone density test and mammogram; and (4) a discussion of her depression complaints. The notes also state that while they discussed treatment options for depression, including medication and counseling, the claimant indicated that she wanted "to think about it."

Two weeks later on August 15, 2006, the claimant went to her initial gynecology appointment. Progress notes from that appointment state she "presents today as a referral because she 'just got into the VA system.' [Patient] has no [complaints] today." The notes further stated that "[s]he has no [gynecological] complaints."

In November 2006, nearly a month after her alleged disability onset date, the claimant told her doctor "that she has been taking Naproxen for right hip pain. States it helps but she does not want to continue taking it." The following month in December 2006, she began an exercise regimen. Progress notes state: "[V]eteran began initial program of aerobic exercise including walking on the treadmill and light weight resistance exercises. Veteran will also begin AB/back groups on 12/27/06 to work on strengthening core muscles." She would continue this exercise regimen for the next several years.

In April 2007, the claimant began attending psycho-educational group sessions in which she was able to discuss events in her life. Progress notes indicate in 2007 she was actively dating, took multiple out-of-town trips, and went out with friends.

Around the middle of 2007, the claimant complained again of chronic hip pain, which she described as "excruciating." But on June 21, 2007, her progress note stated: "[V]eteran is currently using the bicycle, arc trainer, ab machine, treadmill, and an assortment of free weights and machine weights. She is doing an excellent job of maintaining loss of inches while building overall strength and fitness." In July 2007, she returned from travelling and "reports she had a great time on her vacation to the Grand Canyon."

On October 1, 2007, a progress note with her physician contained a section asking: "Does the patient display any of the following: immobility; incontinence; poor nutritional status?" to which the doctor wrote: "No."

A medical progress note from February 12, 2008, found the claimant was continuing her gym routine, "4 days/wk (treadmill, bike and arc slider), abs class 3xwk, walks her dog 15-20 min most days; had been doing weights," but her trainer "told her to quit" because "adding muscle would make her gain weight." In addition, she was eating out on a regular basis and had "gone to Vegas twice lately."

By April 24, 2008, her psychiatric progress notes found, "[Patient] doing well. Plans on a train trip to LA with fr[ien]d in July. May have to sell dog, [name withheld], b/c she is gone too much. Is exercising at VA gym and attends MAPS. Has found some [ ] friends through the MAPS group." The notes made no reference to issues involving PTSD. On June 2008, medical records stated the claimant was "doing very well physically."

By August 2008, group therapy notes even stated the claimant "was cheerful and had good energy." While the claimant believed she was "in a personal relationship that was not serving her needs," physically she appeared to be fit and healthy.

Despite evidence of increasing emotional and physical health, on September 3, 2008, the claimant applied for disability benefits. In her disability application forms, the claimant alleged an inability to bend and stoop due to pain and difficulty walking and standing for long periods of time.

On September 8, 2008, the claimant visited her doctor at the Veterans clinic who advised her, "to continue general aerobic exercises at least twice a week." Several days later on September 16, her doctor said she was physically well enough to "return to a regular exercise program … this will include both aerobic and strengthening to help her attain her

goals. Arc Trainer, bicycle and cross trainer for aerobics and moderate weight lifting for toning."

Her application for benefits was denied on September 30, 2008, and she applied for reconsideration on November 7, 2008. On November 17, 2008, her doctor advised her to get more exercise, writing: "Advised to gradually increase until walks briskly (15-20 minute mile) for 1 hour at least 3-4 times weekly. Other forms of exercise may be utilized if desired or needed by the patient."

According to a psychological evaluation on January 21, 2009, the woman explained that at least one of her recent job losses was unrelated to any disability: "She reports being fired from last work at [name withheld] for being disrespectful to customers and from [name withheld] after three weeks due to she stayed in the bathroom too long."

During a psychological exam on February 10, 2009, she told her doctor, "she is applying for Social Security Disability benefits, 'for my hip, it's been hurting four or five years, I can walk and it goes out, and the pain goes into my back and in the other hip I have numbness down my right leg.'" When asked to describe her typical day, she noted she, "had been going to the gym, but the doctor took me off until he finds out about my hip ...."

She explained again that she was not working, in part, because of factors unrelated to disability: "last worked as a part-time crew member at [name withheld] in December, 2008, a job from which she was terminated after only ten days of employment because, 'he said I was being disrespectful to customers.' Prior to that, she had worked as a crew member at [name withheld] part time for three weeks until being terminated because, 'they said I stayed in the restroom too much,' and prior to that, she had been a receptionist part time at the [name withheld] for five months until quitting because, 'I felt unsafe there.'"

The DDS decision to grant the claimant benefits upon reconsideration under the grid rules failed to acknowledge any of the evidence in the file about the claimant's physical activity, lack of incontinence and PTSD complaints, and ability to work.

Oklahoma Case 177. The Social Security Appeals Council (SSAC) overturned ALJ Thomas Bennett's denial of benefits for a claimant who alleged disability due to arthritis, anxiety, and depression. The SSAC did not disagree with his review of the medical records, which found her not to be disabled, but rather that he incorrectly stated her age. In so doing, SSAC found the woman qualified for disability benefits by meeting the grid rules.

The majority of records in evidence involved prison medical records from 2005-07, which documented only routine check-ups. Notes from her last prison health checkup dated February 2007, stated the claimant told the physician she had a history of Hepatitis C, but reported no other issues. The physician prescribed ibuprofen, but failed to document why. An earlier progress note dated April 2005, stated the claimant had arthritis in her back, but no x-rays or other tests corroborated this finding. The state DDS sent the claimant to both physical and psychological consultative examinations.

Physical CE. On September 17, 2007, a doctor performed a "comprehensive internal medicine examination" on the claimant. Her chief compliant was "chronic low back pain and pain in neck shoulders, hand, knees, and feet," however, the claimant "does not take medication." The physician wrote:

> The patient has normal speech and hearing. She has normal cognitive function. She has good dexterity of her hands and fingers and good grip strength. She has some mild limited rotation of her neck and some mild limited flexion of her back. She ambulates in the hallway at a normal gait and pace and without a limp. She has no chronic pain behaviors or malingering behaviors. She has flat affect and appears to be depressed.

The doctor also noted that the claimant "has adequate muscle strength and tone in the upper and lower extremities" and "can heel, toe and tandem walk without difficulty." The notes contained no reference to the presence of arthritis.

Psychological CE. On October 11, 2007, the claimant was assessed by a licensed psychologist. Based on his assessment, the psychologist determined the claimant "reported the onset of severe anxiety symptoms in the eighth grade." He also pointed out "she has a history of substance abuse, most notably prescription medications." The psychologist determined the claimant had "generalized anxiety disorder" and "avoidant personality disorder." The claimant had, however, never taken medications for either of these conditions, making it difficult to determine how long they had really existed and whether they had responded or would respond to treatment. The analysis did not contain any information or documentation establishing that the claimant suffered from the disorders prior to 12/31/2006, the latest date on which she was insured.

The psychologist also found:

> Cognitively, her memory and concentration were within normal limits. Her vocabulary is average, as is her ability to perform simple math operations. She is able to reason abstractly, and she has a below average fund of General Information. It is estimated that her intelligence lies within the low average range.

The CE made no recommendations regarding particular work limitations, but stated the claimant had a history of substance abuse and could manage her own money.

DDS Explanation of Determination. The DDS denied the claim and explained that the claimant did not have enough evidence to make any finding of a disability.

> Insufficient [medical evidence of record] at [date last insured], 12/31/06. Currently, with CE in file, claimant shows no manifestations of osteoarthritis or rheumatoid arthritis in hand or fingers. Joints have normal [range of motion], back has slight decrease in [range of motion], SLR-negative, heel/toe waling normal, normal gait. Physical is nonsevere.

The initial denial was affirmed at reconsideration for the same reason and stated "insufficient evidence to find the claimant disabled prior to 12/31/2006, the date she was last insured to receive benefits."

ALJ Determination. The claimant appealed the decision and requested a hearing before an ALJ. On February 2, 2009, however, the claimant wrote to the Oklahoma City ODAR and explained that she "will not be able to attend the hearing scheduled … due to [her] health problems, in particular [her anxiety] of being around people." Therefore, she requested "the Judge to make a decision on [her] case based on the records without [her] live testimony."

ALJ Thomas Bennett denied the claim. Based on the medical evidence, Judge Bennett determined "the claimant does not have an impairment or combination of impairments that meets or medically equals" a listed impairment. The Judge's opinion explained:

> In activities of daily living, the claimant has mild restrictions. In social functioning, the claimant has moderate difficulties. With regard to concentration, persistence or pace, the claimant has mild difficulties. As for episodes of

> decompensation, the claimant has experienced no episodes of decompensation, which have been of extended duration. This is identical to the assessment of the State agency.

With regard to her residual functional capacity, Judge Bennett found that the claimant could perform sedentary work. The judge also found:

> The claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not credible to the extent they are inconsistent with the above residual function capacity assessment.

Therefore, "considering the claimant's age" – which the ALJ believed to be 44 years old – "education, work experience, and residual functional capacity," Judge Bennett explained that "there are jobs that exist in significant numbers in the national economy that the claimant can perform."

On April 28, 2010, the Social Security Appeals Council (SSAC) notified the claimant that the ALJ had incorrectly considered the claimant to be 44 years old. She was actually 49. The SSAC concluded that, due to her age, the claimant would qualify for disability benefits under a grid rule when she turned 50. On June 16, 2010, the SSAC overturned Judge Bennett's decision and found the claimant disabled by moving her disability onset date to her 50th birthday. The SSAC, however, acknowledged "the claimant's subjective complaints are not fully credible for the reasons contained in the body of the hearing decision."

This case demonstrates how a person who appears to be healthy enough to work, based exclusively on the available medical records, was found to be disabled simply because of her age. While the judge mistakenly believed her to be five years younger than she was, this age difference did not change that the fact that her case file lacked the required evidence for a medically supported finding of disability.

Alabama Case 87. In this case, a 49 year-old man was in a car accident in 2008, and sustained lower leg and collarbone fractures. The individual underwent corrective surgery and while DDS determined his injuries would not last more than 12 months, Judge Samuel Childs decided otherwise and awarded SSDI and SSI benefits based on the grid rules. In this case, the judge applied the rules to the man "non-mechanically" as if he were 50, during a period in which he was actually 49 years old.

Medical Evidence of Record. The claimant underwent corrective surgery shortly after the accident and his post-surgery notes from February 8, 2008 stated: "[O]verall he is doing very well ... excellent alignment of the fracture with good callus formation." A year later, on March 9, 2009, an SSA consultative examination found the claimant had light work restrictions, but the examiner also noted: "[The claimant's] allegations are considered partially credible based on the objective information in file." As of September 2009, the claimant reported "no neck pain now" and stated he "wishes to return to the gym doing activities and wants to go to therapy." His physician gave "him a prescription for physical therapy."

In January 2010, the claimant complained of some residual rib pain and breathing difficulty and underwent a rib fixation procedure. Medical records documenting the procedure reported: "[H]e tolerated the procedure well with some improvement in his pain and resolution of his difficulty breathing.... [The claimant] was allowed to ambulate as tolerated." Further, "all lab work and radiological exams were within acceptable limits." A post-surgical exam on February 2, 2010 resulted in the doctor reporting: "everything looks good .... However, he remains frustrated that he was not immediately cured by this operation. If the x-ray shows the plates to be in good position, and I suspect they are, we will give him a period of about ten weeks to heal and then I will follow him up in 2 ½ months ...." That assessment was echoed in a follow-up appointment two-and-a-half months later on April, 20, 2010, where the doctor reported "the rib fixation appears to be in good position." The doctor reported the claimant "still has a little bit of popping when he does certain activities, but his pain has almost completely resolved." The doctor "reviewed his chest x-ray and the plates appear to be in good position."

While he was healing from surgery, on April 29, 2010, the claimant saw a doctor because he "stuck a piece of 2x4 in his right palm about four or five days ago" and he complained that "it still hurts." The medical report did not address the reason the claimant was working with a 2x4 piece of wood, and no inquiry was made to determine whether the claimant may have been engaged in paid work.

DDS Review. The claimant filed his claim on October 9, 2008. He stated he "became disabled on 10/4/08 because of acute multisystem trauma secondary to [a] motor vehicle accident, hypertension, dysthymia, sleep apnea, C6-7 fracture, left clavicle fracture." In response, DDS determined: "the evidence indicates [the claimant's] condition is severe and keeps [the claimant] from working at the present time." DDS denied the claim, however, finding the claimant's injuries were "not expected to remain severe enough for 12 months in a row to

keep [the claimant] from working." DDS explained that "in order to be eligible for disability benefits, a condition must keep [an individual] from doing any work for twelve (12) months from the onset of your condition." Therefore, DDS determined "since you should be able to return to some types of work within twelve (12) months, [the claimant did] not meet the requirements for disability benefits."

ALJ Review. On appeal, despite the fact that the claimant was only 49 when his accident occurred, Judge Childs decided to "non-mechanically apply the grids in this case," and treat him as if he were 50 when the accident took place. The judge reasoned that since the accident was only two weeks prior to his 50th birthday, the claimant should be considered under the grid rules. Judge Childs then found the claimant met grid rule 201.14 on the basis of his age and inability to perform even sedentary work, even though his limitation was expected to last less than twelve months and no medical evidence indicated he was unable to work. Interestingly, the judge also added the following to his decision, which suggests that even if a claimant were found able to work, they could still be considered disabled under the grid rules.

> Even if the claimant had the residual functional capacity for the full range of sedentary work, considering the claimant's age, education, and work experience, a finding of disabled would be directed by Medical-Vocational Rule 201.14.

The ALJ made a fully favorable award of disability benefits. His opinion did not discuss the lack of medical evidence establishing the claimant's inability to work, or the March 2009 note in which the claimant sought medical attention for a hand injury he sustained while carrying a 2x4 piece of lumber.

Alabama Case 64. In some cases, ALJs found claimants to be disabled even when medical consultants rendered opinions finding they were not. The claimant applied for SSI on November 30, 2006, and alleged her disabling back and leg pain began a week earlier on November 22, 2006 – less than the 12 months required to establish a disability. Despite medical records suggesting that she did not have a disability, Judge Intoccia found her disabled under the grid rules based upon her age and limited work history.

Medical Evidence of Record. The DDS examiner noted the claimant had "not seen a doctor in over 5-6 years," and sent her to a physician for a DDS consultative exam on January 10, 2007. The claimant reported to the physician that she "last worked in 1996 doing maintenance work in a dance studio. She worked there for five years." The claimant told the doctor: "I was told there was no more work for me there to do, and they

let me go. I didn't look for any work after that. I could've worked but I didn't."

With regard to the claimant's physical health, the doctor noted the claimant "stood up from sitting with ease and moved about with reasonable agility." While the claimant carried a cane, the doctor "determined [the cane] not to be required indoors and probably not outside, either." He also found:

> The strength of her major muscle groups including those of her shoulders and pelvic girdles, those of the proximal and distal portions of her upper and lower limbs, her hand grip strength and finger dexterity were all rated 5 out of 5. She could make a fist with each hand; she could oppose the thumb to the fingers of each hand. She could button and unbutton clothes, tie shoelaces, pick up small objects, hold a glass, turn a doorknob, etc.

The doctor also noted: "She sat comfortably in the chair, virtually in the same position, for about one and a half hours; she did not appear to be in any distress." He then described the claimant as having a tendency "to be very evasive, contradictory, and to exaggerate. She did not appear to be a credible historian." He concluded:

> Based on the medical findings for this examination, I would conclude that she could perform work-related activities such as sitting, standing, walking, lifting, carrying, and handling objects with some minor limitations. There is no problem with hearing or speaking, and she could travel a reasonable distance.

The 2007 consultative exam thus concluded that the claimant could perform a variety of work-related activities with only "some minor limitations."

DDS Review. The DDS denied the claim and found the "medical evidence in [the] file [was] insufficient to establish a diagnosis." The only evidence considered by the DDS was the consultative exam. DDS explained its denial:

> You state that you are disabled because of having pain in your back and left leg. It has been determined that your medical condition does not significantly affect your ability to carry out most routine activities. Since your ability to work is not significantly affected, you do not meet the requirements for disability benefits.

The claimant appealed the decision.

Additional Medical Evidence. After the January 2007 consultative exam, the clamant began to see a physician. Her physician noted on March 6, 2007, that the claimant complained of a "[history] of headache, last worked in 5 years. Having some low back pain." He also noted that the claimant was "awaiting disability." When she saw her physician in August 2007, he noted the claimant had "missed blood pressure med[ication]s past 2 days." In December, the physician noted her "hypertension [was] uncontrolled." On January 30, 2008, the doctor reported the claimant was "doing well, no chest pain." Later that year, on May 7, 2008, the doctor noted that the claimant was "doing better."

No medical evidence indicated the claimant's condition had worsened since her consultative exam.

ALJ Hearing. On May 28, 2008, in a 12-minute hearing, Judge Intoccia announced he was making a fully favorable bench decision and awarded disability benefits "as of November 22, 2006, because of gouty arthritis, hypertension, urinary tract infections, and osteoarthritis so severe that you are unable to perform any work existing in significant numbers in the national economy." Arthritis was not mentioned in any of the medical evidence in the case file; her hypertension was being treated with medication.

During the hearing, the claimant did not speak, and the judge did not ask her a single question. He did, however, add the following:

> And based upon review of the available evidence of record it appears that a wholly favorable Bench Decision can be issued in this particular pursuant claim pursuant [to] Grid Rule 201.01. There are no other jobs that exist in the national and/or regional economy in significant numbers based upon her Residual Functional Capacity of a full range of sedentary, as coupled with her vocational profile during the period at issue.

Because the claimant had reached age 62, had "limited education," and the Judge determined the claimant had the residual functional capacity "to perform less than the full range of sedentary work," he found her disabled.

The judge's opinion did not discuss the consultative exam which found that the claimant could perform a number of work-related activities with only "some minor limitations." Instead, despite the absence of medical

evidence supporting a finding of a reduced residual functional capacity, Judge Intoccia used the grid rules to award benefits to the claimant.

Virginia Case 244. ALJ William Russell ruled favorably for a claimant in an on-the-record decision, without holding a hearing, and awarded her SSDI benefits. The claimant alleged disability beginning November 15, 2006 due to osteoarthritis, anxiety, and depression. The claimant's attorney requested the case be processed by a Kentucky Social Security office, despite the claimant's residing in Virginia. The claimant originally alleged her disability began when she was 53 years old, but ALJ Russell amended the claimant's onset date (at the request of the claimant) to the date of her 55th birthday and awarded disability benefits under Grid Rule 202.02.

Medical Evidence of Record. While the claimant's medical records showed her seeking medical care for a variety of ailments, the claimant received successful treatment for each of her complaints. When she twisted her ankle in October 2007, she was told "just to take ibuprofen." The following month, x-rays of her ankle and cervical spine were normal. The claimant also had high blood pressure, high cholesterol, anxiety and acid reflux, all of which were treated with medication.

Physician progress notes indicated that, with respect to her depression and anxiety, she sought treatment and received counseling and medication in 2006. Physician notes dated December 2007, indicated she was "smiling, alert, and oriented and stated 'I am doing much better.'"

A consultative examination in October 2008 was even more positive. It described the claimant as an "alert and cooperative, physically healthy-appearing, 55 year-old female who was fully ambulatory, and free of any acute distress and who was not using an assistive device." The physician noted the claimant "was free of any workplace or any environmental limitations" and "would have minimal manipulative and minimal postural limitations." With regard to the claimant's residual functional capacity, the physician determined:

> This lady, in her present state of health, could occasionally pick up and carry 20 pounds of weight up to one-third of an 8-hour workday with frequent breaks. She could frequently pick up and carry 10 pounds of weight up to one-half to two-thirds of an 8-hour workday. Sitting, standing, and walking were unaffected.

According to SSA regulations, these restrictions allowed the claimant to perform "light" work.

DDS Review. In October 2008, DDS denied the claim and found, according to the grid rules, the 53 year-old claimant was not disabled. DDS determined that the claimant, given her education and past work experience, "retains the capacity to perform such jobs as: ticket-taker (amusement and rec.); folder (laund.); marker (ret.tr.)." DDS also noted the claimant's "allegations are not fully credible and [claimant had a] non severe impairment."

The claimant requested the agency reconsider her denial, which was affirmed upon reconsideration because there were "no new allegations or worsening." As mentioned earlier, "on 10/14/08 [the claimant] was seen for a physical CE and she was alert, cooperative, and healthy-appearing, NAD [nothing abnormal detected]. She was very well oriented, related well to others and gross mental status was intact. She had normal affect [and] memory." On July 16, 2009, the claimant changed attorneys, requesting new representation.

ALJ On-the-Record Decision. While DDS denied the claimant, who initially alleged that her disability began when she was 53 years old, she was approved by Judge Russell in August 2009, after moving her onset date to her 55th birthday. Under the grid rules for "advanced age," 55 and older, the Judge used the DDS finding to award benefits under the grid rules for claimants able to perform light work. His decision shows how the grid rules allow claimants to be categorized as disabled and receive disability payments, despite being found able to perform light work.

Suspect Use of Gridding Rules. The 300 cases reviewed in the investigation provided evidence of some troubling results under the gridding rules. In some cases, ALJs found a claimant disabled and awarded benefits even when medical evidence indicated that the claimant was able to work. In other cases, some ALJs found claimants to be able to perform work at a "less than sedentary" level, even if other agency officials or doctors found them able to work at a higher level. In still other cases, "less than sedentary" seemed to function as a catch-all to find a person disabled if they did not match either the medical listings or the grid rules. Judges would simply total up a claimant's various medical ailments and explain that even though a plain reading of the Medical-Vocational Rules would find "not disabled," additional evidence obtained by the judge found the person to be limited to less than sedentary work, and so a finding of disability was most appropriate. Several examples illustrate these concerns.

In ***Virginia Case 257***, Judge Peters awarded SSDI and SSI benefits to a claimant. The claimant's attorney and Judge Peters agreed, in an off-

the-record conversation prior to the hearing, to amend the claimant's onset date to take advantage of the grid rules.

When the claimant applied, she alleged her disability began on November 6, 2007. The 48 year-old female asserted she suffered from "diabetes, heart, hypertension, cholesterol, depression, degenerative disc disease, left elbow pain, limited use of left hand, headaches, dizziness, numbness in feet, fatigue, shortness of breath, blurred vision." DDS denied the claim on April 15, 2009, and reasoned:

> Records reveal no significant damage to vital organs due to hypertension, diabetes mellitus, or cholesterol levels. There is no significant abnormality related to headaches, dizziness, numbness fatigue, shortness of breath, and blurred visions. She has adequate range of motion and muscle strength throughout.

In assessing the claimant's credibility, the DDS doctor who reviewed the claimant's file determined:

> Of greatest significance in determining credibility of the claimant's statements regarding symptoms and their effects on her functioning was her medical history. The description of the symptoms and limitations provided by the claimant throughout the record has been inconsistent and is not persuasive. Based on the evidence of record, the claimant's statements are found to be partially credible.

On May 1, 2009, the claimant appealed her denial and requested a hearing before an ALJ.

In the meantime, in January 2010, the claimant was referred to a doctor to be evaluated for gastric bypass surgery. The examining doctor noted the claimant had worked at her job "until she was laid off." The evaluating physician determined, after the claimant completed a basic personality inventory, that she "presents as an acceptable candidate for gastric bypass surgery." He also noted that "she displays a willingness to follow medical directions and complicated medication routines."

ALJ Hearing. On May 19, 2010, Judge Peters held a hearing and went on the record at 11:24 a.m. The hearing transcript is excerpted below:

> ALJ: Well, good morning. Judge Peters, I'm the Administrative Law Judge. Counselor, do I need to go over the definition of disability in any preliminary matter?

Atty: You don't, your honor. I waive reading of those.

ALJ: All right. Now, according to my notes, this lady applied July 11th of 2008. Her date last insured is 12/31/08; so she's well within her insurance status .... Any objection admitting the record, sir?

Atty: I do not, your honor.

ALJ: Let me state for the record that just before we went on the record, we had a brief discussion – or I had a brief discussion with about the possibility of amending the onset in this case to this lady's 49-and-a-half birthday which is how far we can take a grid backwards. You would be 50 as of this year?

Clmt: Yes.

ALJ: So you['re] just 49. Okay, so if you move that six months, September, October, November, December, January – so we're talking about March 19th of this year, that isn't going to give her much of a lump sum.

Atty: Right.

ALJ: But, at least that get us lined up with where the medical record is, I think. And the reason I'm trying to reach an agreement on this ma'am, is that we have a physical assessment [] by a physician. A physician actually reviewed you[r] record April 9th of 2010. He put you at a light exertional level. It seems to me that over time you've actually been getting worse so that – you wouldn't disagree with that. And so it seems to be that some point in time, you along the way, probably have actually reached the sedentary exertional level. And the, the furtherest back I can stretch it and meet the grid rules would be age 49-and-a-half, and that simplifies things for us and allows me to reach a decision more quickly and conclusively using that grid rule. But you are giving up a little bit of – not a little bit – you're giving up your onset date of July '08 – excuse me, you onset date of November '07 and moving it forward to

March of '09. Are you satisfied with that result? Do you understand why we're trying to –

Cmt: Yes.

ALJ: – to settle it that way?

Clmt: Yes.

ALJ: Okay. If you're satisfied with that ma'am, then I will find in your favor that you are at a sedentary exertional level, and that you could not return to your past work at a sedentary exertional level with some other limitations that you might have, and that therefore you would fit that grid rule. Okay? Anything else sir?

Atty: I think that's everything, your honor.

ALJ: All right. Thank you all so much, we appreciate your coming and we'll get a decision out to you as quickly as we can ma'am.

Clmt: Thank you.

ALJ: All right, thank you.

Judge Peters closed the hearing at 11:28 a.m., four minutes later, and awarded the claimant benefits under Medical-Vocation Grid Rule 201.14, finding she could perform sedentary work. The decision noted "at the hearing, the claimant and her representative amended the alleged onset date of disability from November 6, 2007 to March 19, 2010, which is within 6 months of the claimant's 50th birthday." While this decision may have reduced the amount of back-pay by two years by moving the disability onset date from 2007 to 2009, the judge also essentially ignored the evidence questioning whether the claimant was, in fact, disabled.

Oklahoma Case 129. In this case, an SSA senior attorney awarded disability benefits for a rotator cuff injury and "continued chronic pain and limited mobility of the left shoulder." The claimant, who was "right hand dominant," was cleared to return to work with some restrictions, but was ultimately found by SSA unable to do any job in the national economy because of the grid rules. After alleging a disability that began in 2006, the claimant's disability onset date was moved to after her 50th birthday, at which point she was found disabled.

The claimant injured her rotator cuff on the job in 2006, and later received corrective surgery. Following surgery and physical therapy, her physician cleared her to return to work in 2007, with only an overhead lifting restriction and a 39-pound weight lifting restriction. Her physician indicated she could do work with her hands, but should work a shortened day during her recovery period. Evidence suggests the claimant returned to work for a short period of time, but stopped because her former job required her to lift 60-75 pounds.

The claimant filed for SSDI and SSI benefits on March 13, 2009, alleging a disability that began on November 26, 2006 when lifting a heavy object at work. On May 5, 2009, the claimant amended the application to move the date of disability back to May 26, 2006, six months earlier.

Her claim was denied by DDS. The claimant obtained an attorney, and on November 4, 2009, requested an ALJ hearing, explaining, "Based on my age, education and ability I do not believe that I can perform any substantial gainful work activity."

A review of her medical records, however, showed the claimant could still work, even if not at her prior position. She had shoulder surgery on May 22, 2007, and on September 28, 2007, her treating physician commented, "I think she is doing very well, but I don't think she is going to be able to go back to all of this overhead work that she has been doing.... I am going to get a functional capacity exam on her to see what she can do."

The physician's notes later reported: "The functional capacity exam felt that she could perform medium level work for an 8 hour day. At her regular job she has to lift [objects] that weigh 60 pounds. During testing, she could only lift 39 pounds safely. She could only push 48 pounds safely. They felt that she could lift the lightest [objects], which fell within the safety requirement, and I agree with this."

Notes from her rehabilitation clinic found on October 23, 2007, five months after her disability onset date: "[W]e recommend a work reintegration program in which she would begin working a shortened day and only lift the lightest [objects]. She can then be advanced as tolerated."

By March 2009, she continued to complain of shoulder pain, but a physical examination documented "she has good passive [range of motion]." The examiner even questioned whether the claimant was providing a credible description of her abilities. He wrote: "I am not

sure whether she is fighting me or not on the exam. Her exam is too random to make any objective findings." While also stating that she was under a "reasonable" permanent restriction for light duty, continuously lifting 25 pounds and occasionally 50 pounds, he also called them "somewhat generous." He said she could return to work on March 9, 2009.

Shortly after, on May 4, 2009, the claimant's application for benefits was denied by DDS, which explained: "Your condition is not severe enough to keep you from working.... Based on your description of the work you performed as a [job title] for several months, evidence indicates you are capable of doing this type of work." The claimant appealed this decision.

On October 14, 2009, DDS denied the claim again under reconsideration, explaining: "Although you cannot move your left shoulder as well as you used to, you can still perform some types of work. Medical evidence does not show any other impairments which keep you from working. Your condition prevents you from doing your past work, but it does not prevent you from doing other work which is less demanding."

While the claimant appealed to have her case heard before an administrative law judge, her attorney wrote a letter to an SSA staff attorney of the Oklahoma City office on January 14, 2010. The letter said he was, "asking you to consider an amended onset date of May 22, 2007, in this matter. It is my understanding that the amendment of the claimant's onset date to May 22, 2007, will allow for the issuance of a fully favorable decision in this case."

A little more than a week later, his request was granted. On January 25, 2010, an SSA senior attorney awarded benefits by deciding the case in the manner requested by the attorney. The senior attorney adjusted the disability onset date and also found the claimant capable of only sedentary work. Such a finding is counter to SSA regulations, which state the ability to lift 39 pounds is "light work," a level higher than "sedentary." The senior attorney amended the claimant's onset date from 2006 (the date of her original injury) to May 22, 2007, the date of her surgery. By doing so, the claimant's onset date was then after the claimant's 50th birthday, at which point the SSA Medical-Vocational Rules offer a grid, which makes it easier to find the claimant is disabled.

VI. CASES AWARDED WITH INSUFFICIENT, LATE AND CONTRADICTORY EVIDENCE

An award of disability benefits must be supported by medical records establishing how the claimant is disabled. The 300 cases reviewed in the investigation, however, found case files that contained no medical evidence at all as well as case files where the medical evidence contradicted or disputed a claim of disability, but was not addressed by the agency. Other cases contained medical evidence indicating the claimant was suffering only a non-severe condition or one that would not last more than one year, as statutorily required. In still other cases, the medical evidence consisted of only the claimant's subjective complaints, with no objective tests such as x-rays, doctor notes, or laboratory findings, to support the claim. In addition, in some case files, the medical evidence was submitted at the last minute, giving medical experts insufficient time to evaluate the new evidence or to weigh it against other information in the file.

A. Use of Late-Breaking Evidence

On the Social Security Administration website, the agency encourages claimants requesting a hearing with an administrative law judge to submit any new evidence as soon as possible.[81] While the rules in most SSA regions allow new evidence to be introduced at or even after the hearing, doing so is discouraged because it gives too little time for proper review. In a document titled, "Best Practices for Claimant's Representative," the agency strongly suggests getting all evidence submitted "more than 10 working days before" a hearing.

> Early submission (more than 10 working days before hearing) allows hearing office personnel to exhibit the evidence and ensures that the claimant's copy of the file includes a copy of all the evidence that has been received. It also gives the ALJ time to review all the evidence, and helps to ensure that all relevant evidence is timely provided to experts scheduled to appear at [the] hearing.[82]

In Region One, which includes six Northeastern states, it is not merely a suggestion, but a requirement that all evidence be submitted "no later than 5 business days before the scheduled [ALJ] hearing. Failure to

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[81] Social Security Administration, Hearings and Appeals, Best Practices for Claimants' Representatives, http://www.ssa.gov/appeals/best_practices.html

[82] Social Security Administration, Office of Disability Adjudication and Review, Office of the Chief Administrative Law Judge, "Best Practices for Claimant's Representatives," January 2011, http://www.ssa.gov/appeals/documents/BestPractices_508.pdf.

comply with this request may result in the ALJ declining to consider the evidence."[83]

While a mandatory deadline is in place only in this one region, the agency's Chief ALJ, Debra Bice, told the Subcommittee that she strongly discourages late evidence in all regions, because it leaves too little time for proper review.[84] When asked how ALJs should handle late-arriving evidence, she said: "My policy is if evidence comes in at the last minute, you can do a hearing, but you may need a supplemental hearing" to allow sufficient time for review.

In several cases reviewed in the investigation, late evidence was introduced into the hearing record and given controlling weight, leading to a claimant being found disabled. In some of these cases, the evidence arrived only hours before the hearing began, while in others the evidence came in the final days or weeks before the hearing even though that hearing took place one or two years after the DDS denial of benefits. In several of those cases, the claimant's attorney submitted the new evidence, often in the form of a questionnaire from the claimant's treating physician showing a total disability. Judge Howard O'Bryan called such reports "dead man's reports," and told the Subcommittee they were often disregarded.[85]

For example, in ***Alabama Case 69***, mentioned in a prior section, a hearing held on the morning of January 7, 2010 featured evidence created and submitted the day before, on January 6, 2012. Not only was the evidence late-breaking, it consisted of a one-page questionnaire in the form of a "pain assessment" created by the claimant's attorney. The options it provided and asked the doctor to circle were vague and difficult to understand and assess with specificity. The ALJ nevertheless afforded it controlling weight and used it to determine the claimant was disabled. Several other examples follow.

Alabama Case 67. Administrative Law Judge Tracy Guice awarded disability benefits in a bench decision to a 39 year-old female "as of January 23, 2007 because of partial complex seizure disorder; sleep apnea disorder; lumbar disc disease; bursitis; right shoulder; headaches; depression; asthma; and morbid obesity so severe that you cannot perform your past relevant work or other work existing in significant numbers in the national economy." The evidence in the claimant's case

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[83] The five-day submission requirement applies to claims filed in: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut. Website of the Social Security Administration, "Request for Hearing by Administrative Law Judge – Form HA-501," http://www.ssa.gov/online/ha-501.html, accessed August 30, 2012.
[84] Subcommittee interview of Chief ALJ Debra Bice (8/3/2012).
[85] Subcommittee interview of ALJ Howard O'Bryan (8/31/2012).

file did not sufficiently support a finding of disability, but evidence submitted less than 24 hours prior to the hearing was used by the judge to issue a bench decision – typically reserved only for those cases with the most obvious disabilities.

Medical Evidence of Record. Most records in the claimant's file pertained to the claimant's hernia repair in 2006-2007. Following a 2006 hernia surgery, she experienced an infection that required a second surgery in January 2007. When discharged on January 28, 2007, her physician noted "she had significant improvement in her preoperative pain status."

She underwent outpatient surgery later that year to remove a benign uterine fibroid. Neither the hernia, nor the fibroid surgery was expected to cause disabling loss in function lasting over 12 months. The remaining evidence in the record consisted of brief progress notes from her treating physician that documented routine visits for complaints including a urinary tract infection, headaches, indigestion, anemia, hypertension, and insomnia, all of which were treated by her physician. None of the treating physician's notes mention the issue of disability until July 2009, when the claimant told her physician "she is going to apply for disability."

Evidence of Work. The case file also contained evidence suggesting that the claimant may have been working during the timeframe the claimant asserted she was unemployed and disabled. A medical note dated February 6, 2007, after the claimant's alleged disability onset date, stated that the claimant was "having some lower abdominal pain;" and her physician noted the claimant "[d]oes a lot of lifting at work." The physician found the claimant's "abdomen benign," but noted "the patient [was] post-excision of infected hernia mesh."

Morbid Obesity. A number of notes in the claimant's file also described the claimant as a "morbidly obese female," which resulted in related health issues. For example, her physician prescribed the use of a continuous positive airway (CPAP) machine to address the claimant's sleep apnea. She was also routinely advised to lose weight. However, her weight increased rapidly from 215 pounds in January 2007 to 288 pounds in 2009, though only five feet tall. A doctor's note from August 2008 said the claimant "was 140 lbs. in high school" and that her weight had doubled since then.

Her physician noted on October 8, 2007, that he was "concerned about [the claimant's] weight gain [and] encourage[d] exercises." Just over a year later, on October 22, 2008, the claimant's physician again noted she was a "morbidly obese female." At the same time, her doctor stated she

was in "no acute distress." Her doctor also noted her "vital signs [were] stable," "lungs are clear," "cardiovascular system [was] normal," and "extremities [were] stable." In January 2009, the claimant stated "she desire[d] obesity surgery." But her doctor noted, "she has not lost any weight since starting" and noted his "referral to obesity clinic."

DDS Review. Alabama DDS reviewed the claim and determined the claimant was not disabled. The DDS examiner determined the claimant could perform other jobs that existed in the national economy, based on a review of the Dictionary of Occupational Titles, and cited specific examples: (1) hander; (2) lens inserter; or (3) cuff folder.

New Evidence Prior to ALJ Hearing. On April 8, 2010, at 2 p.m. the day before the claimant's ALJ hearing, the claimant's attorney sent documents from the claimant's treating physician dated April 6, 2010 and April 7, 2010. Included in the documents was a one-page letter from the doctor to SSA stating, "Unfortunately, this pleasant young lady is 100 [percent] disabled" with a short explanation of her medical history. The ALJ heavily relied on this letter to award benefits, despite contradictory medical evidence and evidence suggesting the claimant was able to work.

During the 15-minute ALJ hearing, Judge Guice asked the medical expert present if the claimant could perform work that "involved complex instructions." He responded: "There is not information in here that indicates that she would not be able to perform complex tasks." When pressed by the ALJ, however, the doctor testified it "would probably be difficult, yes." The basis for his view, however, was not requested and is unclear from the evidence in the file. Judge Guice then asked the vocational expert whether the claimant could perform past work or any other work, to which he responded: "No to both questions." The judge then announced that based on the record and the "testimony of the experts, I'm going to issue a fully favorable bench decision."

Virginia Case 240. ALJ David Daugherty of the Huntington, West Virginia ODAR office ruled favorably in an on-the-record decision, finding a 28 year-old claimant disabled due to sciatica, traumatic arthritis, and chronic pain.

Medical Evidence of Record. The claimant alleged his disability began on March 30, 2009, the same day he was laid off from his job as a truck driver. On May 27, 2009, the claimant was evaluated for depression at a care center. Physician notes documented the claimant worked at the same job for eight years; the physician noted the "[p]atient report[ed] he lost his job on March 30." The physician noted the claimant's "job was his life," and that he complained "now he has too much time on his

hands." The physician stated the claimant "has been trying to find a job, but with the economy it's very hard." The physician also reported the claimant experienced "financial problems, kid's birthday coming up [that created] a lot of stress on him trying to provide for his family." The record mentioned the claimant "has back pain" and his "medications include methadone." The claimant was prescribed Celexa for his depression.

The latest medical record in the file dated September 1, 2009, regarding the patient's depression, noted the claimant's "interest ok," "sleep ok," but that he "report[ed] feeling bored/restless being out of work." He reported "being worried about finding a job."

DDS Review. Based on the evidence, the DDS denied the claim and explained after reconsideration:

> The evidence shows that you are suffering from pain in your back and left leg. Despite this pain, you are still able to sit, stand, walk and move about within an adequate range without assistance. Blood levels of cholesterol do not affect a person's ability to perform work. Sleeping problems can be controlled with medication. Your feelings of fatigue may be bothersome, but it does not prevent you from work. You have had problems with depression, anxiety, and substance abuse in the past, but you still retain the capacity to interact appropriately with others as well as to understand and follow work related instructions with normal supervision.

As such, the DDS found that "based on the description of the job you performed as a heavy equipment operator in the past for 10 years, we have concluded that you have the ability to do this job."

Attorney-Procured Medical Assessment. In the decision awarding benefits, Judge Daugherty relied solely on the attorney-procured medical opinion that arrived two-and-a-half weeks before the decision was issued. The physician evaluated the claimant on February 11, 2010. On March 1, 2010, Judge Daugherty found "[h]aving considered all the evidence, [he] was satisfied that the information provided by [the doctor] most accurately reflects the claimant's impairments and limitations." The physician's opinion, labeled "Social Security Disability Medical Assessment," opined the claimant had been "injured in a very serious accident" and "had extensive degenerative arthritis, high blood pressure, high cholesterol, and previous fractures involving his collarbone." No other medical records in the file supported or even mentioned these findings. The physician also referred to an MRI performed at a local

hospital that was "positive." The medical file, however, contained no MRI.

Judge Daugherty's opinion acknowledged that the evidence would suggest a finding of "not disabled," but that he was ruling in favor of the claimant anyway.

> If the claimant had the residual functional capacity to perform the full range of sedentary work, considering the claimant's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.27. However, the additional limitations so narrow the range of work the claimant might otherwise perform that a finding of disabled is appropriate under the framework of this rule.

Judge Daugherty's approved the claim based on the attorney-procured medical opinion, despite the fact the opinion was inconsistent with the other medical records in the case file.

Alabama Case 54. ALJ Vincent Intoccia ruled fully favorable for a claimant who was not only working after his alleged disability, but reported earnings significantly higher than "substantial gainful activity" or SGA. Under SSA rules, even if a person alleges a serious injury or illness, earning above SGA means that person is considered "not disabled." In this case, the judge used late-arriving evidence to make a questionable determination that the claimant was working in a "sheltered workshop." By doing so, he ruled that none of the claimant's earnings would count against him, and found him disabled.

A "sheltered workshop" under SSA rules is an organization that provides a non-competitive work environment for people with impairments. These organizations train individuals in how to return to the workforce free from work pressures, and are often funded with government money.

> A sheltered workshop is a private non-profit, state, or local government institution that provides employment opportunities for individuals who are developmentally, physically, or mentally impaired, to prepare for gainful work in the general economy. These services may include physical rehabilitation, training in basic work and life skills (e.g., how to apply for a job, attendance, personal grooming, and

> handling money), training on specific job skills, and providing work experience in the workshop.[86]

In contrast to that description, the claimant's employer was a for-profit manufacturing company.

The claimant alleged problems with his right leg and knee, chronic obstructive pulmonary disease, colon issues, and diabetes, which he said made him unable to work beginning on January 1, 2009.

After this date, however, the claimant reported income above the program's allowable amounts in both 2009 and 2010. Yet, when asked in paperwork for SSA, "[d]id you work at any time after the date your illness, injuries, or conditions first interfered with your ability to work?" he answered "No" and that he stopped working on December 31, 2008. The reason for the contradictory information was explained during the ALJ hearing in which the claimant explained that his employer let him keep working with a reduced workload after he could no longer do his old job.

On December 10, 2010, the employer wrote a short, two-paragraph letter to the claimant's attorney "at the request of [the claimant]." It said the claimant had become "physically unable to perform his duties" and "should be considered a candidate for disability." The letter ended with the employer's human resources specialist saying she would "be more than happy" to do what was needed to help with his disability claim.

At the hearing on February 1, 2011, which lasted 15 minutes, the judge confirmed with the claimant that he had "continued to work at the same place" he had prior to his alleged disability. The judge also asked the claimant, "are you still working a 40-hour week?" to which he answered, "Yes." During the remainder of the hearing, ALJ Intoccia queried the claimant about the employer's accommodations, such as allowing for an increase in breaks and a higher than usual number of days off per month. He asked the claimant whether it, "would be fair to say that part of the reason that they are letting you get away with all of this, missing days at work is because of the past relationship that you've had with this employment," and the claimant said, "Yes."

The claimant informed the ALJ, however, that only a week-and-a-half prior to the hearing, on January 20, 2011, his employer issued him a second letter from the same human resources specialist, this time threatening potential disciplinary action if he did not correct his

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[86] RS 02101.270 Services for Sheltered Workshops, https://secure.ssa.gov/poms.NSF/lnx/0302101270.

"attendance problem." The letter said: "[W]e are having to inform you that we would take the necessary step to correct that problem … if you are having any personal problems that are contributing to the absences on your record, we urge you to utilize the [Employee] Assistance Program." He said he forgot to bring the letter from home, but the judge told his attorney, "It might not hurt to fax it in to the e-file after the hearing."

In addition to the letter arriving late into the case file, it contradicted the claimant's explanation that he had received special accommodations from the employer. If the employer had approved and arranged for a special work schedule, it was not clear why the claimant was being threatened with disciplinary action for doing what had been approved. Second, it appeared that the letter was created to assist his disability claim by showing that the work arrangement might soon come to an end.

The prevalence of issues related to the claimant's apparent ongoing work overshadowed questions related to his medical impairments. At the hearing, his attorney offered to explain his client's medical records, but the judge declined, saying he was only concerned about "the issue of the employment" and to get the letter sent in as soon as possible.

ATTY: Your Honor, I did not go into the medical evidence when, when I still was examining my client. I thought you wanted me to just go onto the issue of the employment.

ALJ: That's all that I'm concerned about. Oh, unless –

ATTY: I had gotten all those hospital records in. I, I was prepared –

ALJ: Right.

ATTY: – to go over them with you.

ALJ: Uh-huh.

ATTY: But that's fine.

ALJ: Yeah, they're in here. Then we'll go ahead and close the hearing, and, and get a decision out as soon as possible, and do you think in the next five, six days you could fax that letter into the e-file?

ATTY: Yes

In his fully favorable decision, Judge Intoccia found the claimant disabled from January 1, 2009, based primarily on the late evidence regarding the claimant's work conditions. The judge found that "the claimant has not engaged in substantial gainful activity since January 1, 2009." In 2009, agency rules determined "substantial gainful activity" was $11,760 and in 2010 it was $12,000. During that same period, however, the claimant's records show he earned $22,671.19 in 2009 and $43,219 in 2010 – several times the amount allowed. The judge explained his ruling by saying:

> according to the credible testimony of the claimant these earnings were because the claimant was provided special accommodations beginning January 1, 2009 by his long time employer of 18 years so [he] could keep his health insurance. These special accommodations included, but were not limited to, performing only 50% of his assigned duties and allowing him to take a 30-minute break every hour in an eight hour work day, which in essence constitutes a less than sedentary type of accommodated/sheltered environment. In addition, he is permitted to be absent for five workdays per month, although the policy only allows for no more than two absences. Despite the claimant performing his work at a level substantially less than what is permitted in a competitive work environment versus what other employees are allow[ed] to do he was still paid by his employer.

The judge went on to explain that SSA regulations allow certain types of income that exceed SGA not to be counted against a claimant, including income from sheltered workshops, which as explained above, are rehabilitation centers dedicated to putting individuals back in the workforce. SSA guidance does not allow for a person's place of employment to be considered a sheltered workshop simply because an employer allows a person to remain working for insurance purposes. Moreover, the explained purpose of the arrangement was not to get him *into* the workforce, but to await a time when he would *leave* the workforce. Seemingly in recognition of these limitations, the judge concluded the claimant worked in a "sheltered workshop type of environment."

Oklahoma Case 200. Judge Ralph Wampler awarded benefits to a woman for diabetic neuropathy, a condition causing stomach pain. Benefits were awarded even though the claimant explained that she could perform the type of activities ordinarily performed by people who can do "light" work. The judge determined instead she could only perform work that was "less than sedentary," relying heavily in his

opinion on a letter provided by the claimant's attorney that arrived six days after her hearing.

On July 9, 2008, the woman underwent a physical exam to determine her "residual functional capacity." The doctor concluded she was not disabled, but rather able to do many things.

> Claimant lives with her family. She is able to take care of her personal needs with no problems. She does prepare meals multiple times a week. Some of the chores she does around the house include: light cleaning, laundry, most weeding and watering and sometimes she does the mowing. She is able to drive. She does the grocery shopping. She enjoys reading, watching television, knitting, photography and gardening. She attends Church, bible study groups, she goes for walks with friends, and she visits family.

She continued, however, to complain of stomach pain and underwent exploratory surgery. The doctors concluded that there was no identifiable source of her pain, and she suffered from diabetic neuropathy.

At the claimant's hearing on September 9, 2009, the judge said he was unfamiliar with diabetic neuropathy and would need more information from the attorney before making a decision.

> ALJ: I think I have a good idea about this case.
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> ATTY: All right, Judge.
>
> ALJ: But I'll tell you what I need from you. I'm not that familiar with this abdominal neuropathy. I need a one-page brief from you within ten days. That give you enough time?
>
> ATTY: Yes, Judge.
>
> ALJ: Okay. At this time, I'll take the matter under advisement.

Six days after the hearing, on September 15, 2009, the claimant's representative sent a one-page letter to the judge that contained a single paragraph about diabetic neuropathy, copied word-for-word from an

online journal article, though the source was not attributed.[87] The letter also referenced a "Physical Capacity Evaluation" dated January 2009 and filled out by the claimant's doctor, which the attorney asked to be given "controlling weight" in the final opinion. It was a two-page questionnaire in which the doctor checked a box that said the claimant had: "No ability to work. Severe limitation of functional capacity, incapable of minimal activity."

In his November 4, 2009, fully favorable decision, Judge Wampler relied heavily on the September 15, 2009 letter from the attorney. He concluded the claimant qualified under the grid rules, because she could not perform "even a limited range of sedentary work." This description stood in contrast, however, to the claimant's own explanation of her daily activities, which were inconsistent with a "less than sedentary" RFC. As controlling evidence, he referenced the January 2009 "Physical Pain Evaluation" and concluded "the claimant's chronic abdominal pain has persisted and appears to result from diabetic neuropathy."

B. Insufficient Evidence Cited to Support Case

When an individual applies for disability benefits, but does not have sufficient medical records for the agency to make a decision, SSA has a number of options. For applicants whose medical records are available, but were simply not submitted, the agency can go to each of the claimant's medical providers and ask for all of the records, for which the agency bears the expense. For claimants that do not have medical records, the agency can send the claimant to a physician for an evaluation paid for by SSA, which is called a consultative exam (CE). According to agency regulations, these consultative exams should be done by a doctor from the medical field in which the claimant is alleging a disability.[88]

If after these attempts are made, and a person is found to be disabled, he or she will be awarded benefits. If the available records show the person not disabled, they will be denied. In a number of cases examined in the investigation, however, claimants who did not have sufficient medical evidence to support the claim were approved anyway.

In these cases, the kinds of problems found by the investigation included cases that lacked any records mentioning the disabling condition at all or

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[87] Bernstein, Gerald, M.D., "The Diabetic Stomach: Management Strategies for Clinicians and Patients," *Diabetes Spectrum*, Volume 13, Number 2000, http://journal.diabetes.org/diabetesspectrum/00v13n1/pg11.htm.

[88] *See* 20 C.F.R. §404.1519g, "Who we will select to perform a consultative examination" (explaining that a "qualified" medical source must "have the training and experience to perform the type of examination or test [the agency] will request").

mentioned other non-disabling conditions. In others, doctors from the wrong medical field provided the key diagnosis. Some cases did not contain any evidence of objective medical tests, but only the claimant's subjective complaints. A last set of cases referenced the alleged disability, but said that it was "non-severe," "well-controlled," or "in remission."

Alabama Case 95. In this case, the claimant applied for disability benefits alleging disabling pain, high blood pressure, and diabetes. The DDS examiner awarded benefits, relying on a medical opinion provided by an obstetrician-gynecologist to diagnose medical conditions outside of his area of expertise involving degenerative disc disease and hypertension, diagnoses which conflicted with medical records obtained from the claimant's doctors in the correct field.

The available medical records in the case file noted that the claimant's diabetes and blood pressure were controlled through medication. Related to her back pain, the results of magnetic resonance imaging (MRI) on every section of her spine showed only mild findings. Nerve conduction studies were normal with only mild inflammation in the lumbar spine and the T-6.

On August 7, 2009, DDS sent a letter asking if the claimant's treating physician would perform an examination of the claimant for purposes of her disability claim, but he replied "No." DDS then requested that another physician review her medical records and render a medical opinion on the claimant's condition, which he did on October 24, 2009. The consultative examiner hired by the agency was not an orthopedic specialist, who would be familiar with the claimant's alleged health problems, but an obstetrician-gynecologist (Ob-Gyn). It appears from the case file the DDS examiner requested the Ob-Gyn specialist to analyze these issues involving back pain, hypertension, and diabetes.

The Ob-Gyn reviewed the MRIs already in the case file and inaccurately concluded they demonstrated the claimant had a ruptured disc even though she did not. The claimant's own physician, who had ordered the MRIs and reviewed them, noted in September 2008, that the "alignment [of her spine] is anatomic. Vertebral body height and marrow signal are normal. The discs demonstrate normal morphology." The same report went on to state each specific level of the claimant's spine was "normal." There was no evidence whatsoever of a ruptured disc. The MRI reports noted mild degeneration, but specifically noted "no nerve herniation." Despite these findings, the Ob-Gyn specialist diagnosed the claimant with "degenerative disk [sic] disease of the cervical spine" and for the "lumbar spine."

The Ob-Gyn specialist also diagnosed the claimant with "hypertension," though the claimant had only two medical records mentioning it, one from 2006 and one from 2008. In the 2006 record, the doctor noted test results that did not lead to a diagnosis of hypertension, but only what "could be a possible cause of potential hypertension." The 2008 record was from a pain clinic, and made a passing reference to the claimant having a history of hypertension.

DDS found the claimant capable only of "sedentary" work, which in combination with the claimant's vocational factors, allowed her to be found disabled under the "gridding" rules under Vocational Rule 201.06. DDS based its analysis primarily on an analysis by a specialist from an unrelated field of medicine.

Oklahoma Case 156. DDS approved benefits for a 42 year-old man alleging depression, anxiety, "nerves," lower back problems, and asthma. His case file contained virtually no medical evidence prior to 2008, when SSA paid for several examinations, yet he was awarded benefits under medical listing 12.05(C) for mental retardation and depression. This listing requires establishing the mental impairment before the age of 22, which in this case was more than twenty years prior.

The claimant applied for both SSDI and SSI benefits shortly after being fired from his work as a mason. SSA awarded benefits by finding the claimant met medical listing 12.05(C) for mental retardation, which requires the claimant to demonstrate a valid IQ score between 60 through 70 along with a physical or other mental impairment imposing an additional and significant work-related limitation of function. A claimant under this listing must also show the mental impairment to have begun prior to age 22.

While the medical evidence documented the claimant's IQ scores met the requirements of 12.05(C) (VIQ of 61; PIQ of 68; FSIQ of 61), no other objective medical evidence in the file established "an additional and significant work-related limitation of function." The only available evidence submitted with the application consisted of the claimant's subjective allegations of pain in his application for benefits. In response, the agency paid for the claimant to receive both a psychological and physical consultative exam to assess his allegations.

The "Work History" filled out by the claimant for SSA indicated that he worked from 2000 until November 2007, as a mason. He alleged, however, that his disability began more than a year before he stopped working, in July 2006.

In January 2008, the claimant attended the consultative examination to evaluate his physical condition. The examining physician found:

> The patient has normal speech and hearing. He has normal cognitive function. He has good dexterity of his hands and fingers and good grip strength. His hands are callused. He has some mild limited rotation of his neck and some mild limited flexion of his back. He ambulates in the hallway at a normal gait and pace without a limp. He has no chronic pain behaviors or malingering behaviors.

While the claimant "state[d to the physician] he has had chronic back pain for years," the physician documented the claimant "has not had an MRI scan," "has never had back surgery," and "has no chronic pain behaviors." The case file, thus, not only lacked objective evidence of the claimant's physical limitation, but also a physician's opinion that he observed no limitations during the exam.

A month later, in February 2008, DDS sent the claimant to a psychologist for a consultative exam for an evaluation of his mental state. In that exam, the physician noted the above cited IQ scores and "the presence of depression was also noted." The examining physician reported the claimant told her "he had experienced depression 'for years'" and "reported a suicide attempt occurred in the 1980s." As a result, the physician determined the claimant was depressed. No objective evidence supported the claimant's claim of depression "for years," nor did the evidence support the fact the depression constituted a "significant work-related limitation of function" since it did not prevent the claimant from working from 2000 to 2006.

The claimant also told the examiner that he had attended special education classes in school, but that he dropped out in fifth grade because of a drugs and alcohol problem. No evidentiary proof, however, was provided that the claimant attended special education or any other document that supported the onset of a mental impairment prior to the age of 22. Nor did it provide evidence of an additional significant work-related limitation, especially in light of the claimant's long work history.

The claimant also reported to the psychological examiner that he had hepatitis B and C, but never sought treatment.

The claimant previously received SSDI from 1991 through 1997; his payments were then suspended due to an incarceration for almost five years. The claimant reapplied for SSDI in 2001, but was denied benefits. Based on his most recent application, DDS found the claimant met the medical listing for disability for both a developmental disorder

(based on recent testing results) and affective mood disorder and awarded benefits beginning in 2006. The case file simply did not contain sufficient medical evidence supporting an award dating back to 2006.

Virginia Case 229. This 59 year-old claimant sustained a crush injury to his foot at work in January 2006, underwent a partial foot amputation, and received a prosthesis that should enable him to walk. The medical record documented that his wounds were healing well when the agency awarded benefits at the reconsideration level. By law, disability benefits may only be awarded to individuals with an impairment "which has lasted or can be expected to last for a continuous period of at least 12 months." In this case, an award was made on October 26, 2006 – only ten months after the injury. Nothing in the record suggested that the claimant would suffer from permanent restrictions.

On January 19, 2006, the claimant was admitted to a hospital due to "trauma, right foot and right lower leg, with pain." The medical records indicated a truck bed fell on the claimant's right foot.

On January 23, 2006, the claimant underwent a "mid foot amputation from the right foot," after which "there were no immediate post procedure complications." When the claimant saw his physician on February 27, 2006, the reported "his pain [was] significantly better." On March 10, 2006, the claimant returned for the physician to check his foot. The physician noted "his wound continues to granulate well" and the claimant "reports no problems."

He applied for disability benefits but was denied by DDS on May 23, 2006 because, "We have determined that your condition is not expected to remain severe enough for 12 months in a row to keep you from working."

Medical evidence indicated that by August 8, 2006, he was making progress in his healing.

> All of [the claimant's] incisions are well healed. He has excellent motion to his knee with full extension and flexion to 130 degrees, which is painless. He has significant quad atrophy and does have some pain with patellofemoral loading. His extensor mechanism is intact. The soft tissue injury around the midfoot appears to be healing well. … X-rays taken today show excellent alignment to his tibia fracture. He appears to have completely healed both portions of his segmental fracture.

With regard to the claimant's use of his prosthesis, the doctor noted: "Once the knee pain has improved and he is able to tolerate full weightbearing on the right lower extremity, we can modify the prosthesis as needed." The physician also stated that "on physical exam, his wound is healed except for that small punctuate area that is over the distal tip. There is an eschar over it. This is not debrided."

Since the claimant was unable to bear weight due to continued pain around his knee, his physician stated:

> [I have] given a slip for physical therapy for quad strengthening and range of motion as I think at least some portion of his pain is patellofemoral in nature secondary to his quad atrophy. I will see him back in six weeks time. We will repeat x-rays to the right tibia then.

Review by DDS. On his application forms, "the claimant [] described [daily] activities that are significantly limited." When DDS reviewed the claimant's initial application, it found that "based on the evidence of record, the claimant's statements are found to be partially credible."

When DDS reconsidered the claimant's application, a different DDS examiner found the same statements "to be fully credible" and the "assessment supports a fully favorable allowance determination." The DDS award of benefits was in October 2006, just ten months after his injury, when medical evidence indicated the claimant was healing well. No evidence in the record supported a finding that the claimant's condition would prevent him from working for a full year or that the claimant would be unable to walk using his prosthesis. Further, the claimant's physician clearly stated that the knee pain was likely due to muscle atrophy from lack of use. Insufficient medical evidence existed to award this claimant benefits. Further, no evidence indicated the claimant's listed resources decreased below allowable amounts at reconsideration.

Alabama Case 65. In this case, ALJ Charles Thigpen awarded benefits to a 35 year-old woman based on cervical spondylosis, tension headaches, migraines, a history of anxiety and depression, and fibromyalgia. The ALJ ignored evidence the claimant failed to comply with prescribed medications, which was in part the reason the claim was denied by the DDS examiner.

DDS Review of Claim. Specifically, DDS noted that while the claimant's physician prescribed various medications to prevent migraine headaches, the medical evidence documented the claimant had not filled any prescriptions. On December 8, 2008, an examining doctor wrote:

"35 [year old] woman alleges intractable migraine … there is no indication in the pharmacy print out of [the claimant] ever obtaining the Keppra. These drugs are intended as preventative therapy and body of evidence in [the medical records] indicates very poor compliance in treatment." In fact, the claimant filled only narcotic pain medications, sleeping medications, abortive pain medications, and anxiety pills. The agency's denial also noted that the claimant's alleged impairments did not prevent her from working.

> You state that you are disabled because of migraines and depression. It has been determined that your medical condition does not significantly affect your ability to carry out most routine activities. Since your ability to work is not significantly affected, you do not meet the requirements for disability benefits.

The ALJ failed to address the issue that the claimant was able to work despite her mental impairments and was failing to take medication intended to alleviate her symptoms. The judge rendered an on-the-record decision.

The ALJ also failed to address the lack of sufficient medical evidence in this case to substantiate the claimant's allegations of anxiety and depression. In fact, on December 9, 2008, a psychiatric consultative examiner determined the woman's depression and anxiety symptoms were "not severe." The examiner also noted that despite receiving Xanax, an anxiety medication, from her treating physician, there was "no professional [mental health history]." The examiner went on to say the "complaints are overwhelmingly of a physical nature; therefore, there is no need for further [mental health] development. Her mental health [history] doesn't appear to affect her current functioning." While the file shows the claimant took medication for anxiety as needed, no treatment records or other evidence existed that documented her mental condition had any impact on her ability to function.

Oklahoma Case 178. DDS awarded SSDI and SSI benefits under reconsideration for a man who met Medical Listing 12.05(B) for mental retardation. Under this listing, a claimant qualifies for benefits if they have "a valid verbal, performance, or full scale IQ of 59 or less" and provide proof of the impairment prior to the age of 22. While the claimant stated he attended special education classes in school, no proof was provided the claimant's mental impairment began before age 22.

The claimant, who was married and had seven children from his current and prior marriages, initially applied for benefits alleging diabetes and blurred vision, making no mention of any mental impairment. In fact,

the records show the opposite. On November 2, 2005, the claimant visited the hospital, but denied, "any nervousness, tension, mood changes, depression, changes in memory, suicidal ideation or homicidal ideation." The application was denied for lack of evidence, with DDS making the following finding:

> 31 y/o male alleges diabetes and blurred vision. The medical evidence in file is insufficient to show an impairment. Additional evidence was not available. In addition, the claimant failed to return Work History and Function Report forms that were sent to him on 11/08/06, 12/19/06, and 05/29/07. The case is denied due to insufficient evidence.

In October 2007, the claimant obtained an attorney and filed for reconsideration by the DDS in Oklahoma City. DDS sent the claimant for a consultative evaluation. The DDS examiner diagnosed the claimant with mild mental retardation and impulse control disorder after an IQ exam found scores of 56, 58, and 62. The examiner also noted: "He has a 12th grade education, but was in special education throughout school." Rather than require the claimant's attorney to obtain objective records to substantiate his education history, however, the examiner wrote: "He alleged problems with reading and writing at Initial level."

An eye exam, also done at the request of DDS on September 27, 2007, resulted in the doctor reporting that tests "failed to reveal any diabetic retinopathy or hypertensive retinophathy." Moreover:

> [b]ased on the examination findings, the patient should not be limited in work-related activities such as sitting, standing, walking lifting, carrying, handling objects, hearing, speaking, traveling, and/or mental activities such as understanding and memory, sustained concentration and persistence, social interaction and adaptation.

Despite this medical evidence and the lack of any other evidence of a significant work-related limitation, the DDS office awarded disability benefits to this individual based upon the findings of mental retardation and affective mood disorders.

C. Benefits Awarded in Cases With Contradictory Evidence

Cases containing contradictory evidence present a particular problem for agency officials, especially if the differing opinions come from two sources of seemingly equal weight. In these borderline cases, it is not unusual for the agency to choose the outcome most favorable to the

claimant. In addition, in a number of cases examined in the investigation, when the contradictory evidence came from two seemingly unequal sources, DDS and ALJ decision-makers still tended to cite the most favorable evidence to find claimants disabled.

Contradictory evidence came in a number of forms. In some cases, it involved conflicting medical records between two doctors. In such cases, the disability decision maker is required to explain why it chooses to give more weight to one than another, though often that did not happen. In other cases, evidence of a person working after their alleged disability onset date provides contradictory evidence regarding the claimant's ability to work.

As part of the disability application, a claimant is required to state the date on which they believe their disability began. This date is known as the "disability onset date." When benefits are awarded, the evidence must support a finding that the alleged disability began on the specified disability onset date. Evidence of work after the disability onset date raises questions about an award of benefits, even if the work results in earnings below the SGA rate which is currently about $12,000 per year, since the claimant must be found unable to perform any job in the national economy.

When evidence of work activity existed, ALJs generally assumed it provided earnings below the SGA rate or relied on statements by the claimant that they were incapable of working at SGA, without any further questioning. ALJs rarely addressed a claimant's current work activity other than eliciting perfunctory statements that the claimant was not earning SGA. There were many instances when medical records suggested that a claimant was or might be working, at which point an ALJ should have asked whether the claimant was, in fact, employed. Additional appropriate questions might be whether the claimant was intentionally working under SGA in order to qualify for disability benefits, receiving unreported wages, or was capable of working longer hours equal to SGA. Some claimants also admitted engaging in such activities as cooking, cleaning, driving, and sitting for extended periods of time that belied the functional limitations described to them in an application form or related document. This contradictory information should also be acknowledged and examined, but rarely was.

Oklahoma Case 181. In this case, ALJ Lance Hiltbrand awarded SSI benefits to a child without properly addressing conflicting medical evidence about his impairment. Three doctors determined that the child did not have marked limitations in any of six "domains of functioning" required to qualify for benefits, though program rules required two marked limitations. Despite this medical evidence, Judge Hiltebrand

concluded the child had marked limitations in three domains, and awarded benefits, without fully explaining why he differed from the doctors.

The child was in the custody of his grandparents, who applied for disability benefits on August 7, 2007, while the child was still in preschool. They alleged attention deficit and hyperactivity disorder (ADHD) and oppositional/defiant disorder.

The initial application for benefits was denied by DDS on January 3, 2008, and again under reconsideration on March 25, 2008. The reconsideration denial explained: "The medical evidence shows the Attention Deficit Hyperactivity Disorder and behavior problems appear to respond to treatment. There is no evidence of a disabling condition due to a learning disability."

Medical evidence dated 2007 through 2009 demonstrated the child's symptoms were well-controlled by treatment and medication. In fact, one of his kindergarten teachers remarked on an October 22, 2007, evaluation "his amazing progress in my classroom gave us both the awareness he is exceptional – and shy – just trying to cover it up. … Of all my students, I am most thrilled with [the child]. A student like [name withheld] is the reason I am a teacher."

His kindergarten teacher made several written comments on a November 2007 evaluation including:

> This is [claimant's] second year in kindergarten. He is currently on medication for ADD & ADHD. I have seen remarkable improvement in [claimant] this year as compared to last year. [Claimant] is currently working on grade level in all areas. [Claimant] is currently taking Adderal for ADD & ADHD. … Last year, [claimant] had problems in all areas. I am seeing considerable improvement in behavior and academics this year. … Since [claimant] has started taking medication, I have no problem w/ [claimant's] behavior. … Since [claimant] started medication for ADD & ADHD, I have seen positive things. He can sit and complete his work. He cooperates with others. He participates in circle activities and centers. He is a completely different child than he was last year.

Despite the treatment leading to improvements, some behavioral challenges remained, causing stress on the grandfather. The child's physician commented on November 21, 2007, at a pediatric visit,

"Grandfather reports things are better but then launches into a litany of problem behaviors, many of which sound like normal kid behavior."

On January 3, 2008, a DDS consultative examiner found the child with a "less than marked" limitation in acquiring and using information as well as for health and well being. All other domains were found to have "No limitation."

Several days later on January 8, 2008, the grandfather took both the claimant and his older sister for a consultation at a child study center, but the physician noted the grandfather, "has a very negative attitude and very unrealistic expectations of his 7 & 6 y.o. grandchildren.... By teacher report does not quite make criteria for ADD but by report of [grand]father teacher is the one who recommended evaluation for ADD."

The child was seen by a different consultative examining doctor on March 24, 2008, to evaluate his "domain limitations," and found the child's limitations were "less than marked" for acquiring and using information, but he had "no limitation" for the five other domains. A pediatric evaluation in April 2008 when the child was six years old noted, "He has problems with noncompliant behavior, but does not appear to have oppositional defiant disorder at this time."

In February 2009, his first grade teacher wrote, "[Claimant] is a strong student with great potential. He is currently on medication to help him focus. His grandparents, guardians are very good about seeing that he takes his medication before he comes to school." The teacher described a number of behavior problems, which she attributed to abuse by his father who had recently been released from prison. She described how his behavior improved significantly when the grandparents regularly gave him his prescribed medications.

On May 26, 2009, notes from a pediatric visit showed that the father's recent return from prison had negatively impacted the boy's behavior and he, "had real problems, sounds like aggression as well as not staying in seat & not getting work done. About to be suspended for rest of year ... [but] Grandfather started giving [medication], behavior at school much better." The notes contained an assessment of the ADHD, saying it was, "improved with meds though some residual [symptoms]. Hard to sep[arate] from other behaviors."

On June 2, 2009, a counselor providing services to the child wrote that he, "is being seen for issues related to depression, anger, self-esteem, and social relationships. In the past, [claimant] has had difficulties paying attention in class, following directions, and getting along with his

peers. His teacher has reported classroom behaviors including difficulties with school work, paying attention, fighting, stealing, and lying. These behaviors have resulted in [claimant's] diagnosis of Depressive Disorder 311, and ADHD 314.09. Continuation of counseling services with [claimant] is anticipated with expected prognosis fair-good."

On August 13, 2009, the day prior to the ALJ hearing, the child's grandfather submitted two signed statements explaining his financial difficulties, and how additional funds would help with the care for both the child and his sister, though almost none of the expenses were medical:

> As I stated when this claim was started 2 years ago, there is a loan for my grandson's hous[e]hold expenses. I have spent a fortune on him and it has been very difficult financially for me and my wife. We have a balance of over $14500 in credit cards for things we had to buy or repair because of him. Because he was crank baby he has violent outbursts and damages the home. I have also had to spend so much money on clothes, furniture, counseling, medications, toys and school supplies, etc. The household expenses average $477 a month. This amount multiplied by 25 months is $11,925.00. This is the amount I need reimbursed.
>
> . . .
>
> I hereby certify that we are in a difficult financial situation. We could really use the 08/2009 check to help with back to school expenses. I also would like to request an advance of the backpayment for the loan. This would be to help pay off the credit card that has expenses incurred for [the child's] care. Not having this credit card debt would ease our monthly expenditures so we can better care for [the child] and [his sister].

At the June 30, 2009, hearing, the judge obtained the opinion of a medical expert by telephone, and explained to the claimant's attorney, "I've used him – well, I've had him testify a lot," but that he was very "competent." During the hearing, the medical expert testified that the child had "less than marked" limitations in all six domains of functioning. Moreover, "with the introduction of Adderall and particularly adding a second dose in the afternoon, his problems disappeared for [a certain] period with medical improvement both in school and somewhat at home." The doctor concluded that the child did not have either oppositional defiant disorder or post-traumatic stress disorder, but was possibly at risk for these in coming years.

Before closing out the hearing, Judge Hiltbrand suggested to the grandfather that he might be more lenient than usual in this case: "[W]e don't want to penalize a good parent ... and a good family environment. You've done a wonderful job. You did all the right things. I know it's hard when you have to sometimes turn against a loved one, your son and others, but I think you had – you saved an individual. So you should be very proud."

Judge Hiltbrand overturned the DDS determination in a fully favorable ALJ decision from August 14, 2009, awarding SSI benefits. Despite none of the doctors finding a marked limitation in more than one domain, the judge found the child had marked limitations in three domains including: acquiring and using information; attending and completing tasks; and interacting and relating to others. He determined the child was disabled since August 7, 2007, the day his grandparents filed an application for benefits and while the child was still in pre-school.

In his opinion, he wrote: "Although [the medical expert] indicated the claimant's limitations were less than marked in the six areas, the Administrative Law gave some weight to the testimony of the grandfather at the hearing and the opinion of [a counselor], and finds the claimant is more limited than determined." Judge Hiltbrand added that the "State agency medical opinions are given little weight." He reasoned the child would "likely need to remain on medication," but failed to acknowledge the substantial improvement made since he had started medication, as noted by both his teacher and doctor.

Alabama Case 62. In 2009, ALJ Charles Thigpen awarded SSI and SSDI benefits to a claimant disabled for major depressive disorder, panic disorder, and hypertension as of October 2006, but whose records document nearly uninterrupted work activity through May 2009. In addition to containing conflicting information about the claimant's ability to work, the case file also contained conflicting information about the claimant's wages. Judge Thigpen calculated his wages to be nearly one-third less than the records showed was the case.

Following initial application, the claimant was sent at the request of DDS for two consultative examinations, one mental and the other physical. The first, a mental evaluation on February 23, 2007, led the doctor to conclude: "Attention and concentration adequate for two-hour periods across an eight-hour day...No significant limitations." On March 8, 2007, she underwent a physical exam, at which the doctor found: "Based on the information in the file the severity of her impairments is not consistent with the severity of the medical in the file. Claimant symptoms are partially credible."

On March 9, 2007, the day after her physical exam, DDS denied the application, giving the following reasons:

> You state you are disabled because of cholesterol, high blood pressure and nervous problems. Considering the restrictions of your conditions, individually and combined, you cannot do the jobs you have done in the past. However, the evidence shows you are able to carry out most activities. Therefore, based on your age, education and past work experience, you are capable of performing certain types of work and do not meet the requirements for disability benefits.

Five days later, the claimant hired an attorney and requested a hearing at the ALJ level, citing as the reason for appealing the DDS decision: "I am disabled because of cholesterol, high blood pressure and nerve problems." When asked on Form SSA-3441, filled out by claimants wishing to appeal to an ALJ, whether her condition had worsened since she first applied, she answered, "no."

Throughout the application process, the claimant continued working, providing significant evidence that she might not have met the statutory definition of disability. According to May 2007 treatment notes from her mental health clinic, the claimant said she had a long history of work prior to applying for disability: "Worked from 1967-2006 first in factories then in home health. Due to multiple medical problems including hypertension, high cholesterol, and what appears to be congestive heart failure she was unable to work and has now filed for disability."

During the early part of 2007, the claimant was put on bed rest stemming from a stressful divorce, but she returned to work on May 29, 2007. A treatment note from her mental health clinic showed she was, "working 14 hours per week on a PRN [as-needed] type basis." Notes from the same clinic on the next day states the claimant "report[s] situational stresses daily and her largest concern is financial. Not being able to pay her bills."

On June 27, 2007, her therapist noted, "she is doing much better with the increase in Xanax and starting the Lexapro meds. Sleep has improved, eating less has lost a few pounds, not as irritable or anxious. Also feel[s] better about herself since working a few hours a week and is maintaining her home." Two months later in August, her therapist wrote: "Client need[s] to be financially stable to help minimize her stresses." Notes from August, though, also show she was still employed, "working about 17 hours a week … doing light duty."

On October 29, 2007, the therapist commented that the claimant, "report[ed] changes in mood d[ue] to lack of financial support," and urged her, "to contact lawyer concerning disability claim." A January 2008 note from the mental health clinic said the claimant, "Works 17 hours a week, part time, light duty spread over five days.... Has not heard from social security yet." By September 25, 2008, notes from the same clinic show the claimant had significantly increased her workload, and "went back to working 35 hours a week and said she is doing okay." Records from her employer show that she continued at her job through May 2009.

ALJ Decision. In his February 2009 decision, ALJ Thigpen ruled favorably for the claimant, determining her disability began on the day she filed her application, October 16, 2006. His ruling failed to address why evidence of the claimant's current and past work history was not relevant to her disability claim. He even appeared to have made a basic factual error in determining the claimant's earnings – finding them too low – and increasing her odds of acceptance into the program. He wrote: "At the hearing, the claimant testified that she is working part-time as a home health aide for the elderly. She stated she works about thirty-five hours per week and earns $300 every two weeks," averaging $4.29 per hour or less than minimum wage. As such, the judge found "these earnings are too low to be considered substantial gainful activity."

The error appears to have stemmed from the ALJ misinterpreting the claimant's hearing testimony in January 2009. At the hearing, the claimant told the judge, "I'm just working part time," but that "it's just minimum wage, you know. I bring home less than probably about three-something every two weeks."

Two pay stubs in the file, one from September 2008 and another from December 2008, show the claimant earned $6.55 an hour, the minimum wage at that time. Yet they also show that the claimant earned $412.65 and $458.50 respectively in each of the two-week pay periods, or more than fifty percent higher than the amount of $300 per week determined by the ALJ. The judge erroneously reported her total income as the amount she kept after taxes, rather than reporting her actual income as reported on the pay stubs in the file. Additionally, a record of monthly earnings from her employer showed that in July 2008, she earned $1,158.85, which when divided by her hourly wage amounted to an average of 39.7 hours worked per week that month.

Further evidence of the claimant's ability to work was delivered at the hearing by the vocational expert present. Under questioning by Judge

Thigpen about whether the claimant could, "do her past work or other work?" the vocational expert answered, "Yes, sir." The judge then asked several more rounds of questions, each time increasing the claimant's hypothetical limitations. Each time the vocational expert affirmed such a person could work, concluding, "I didn't see anything that would preclude work on her testimony."

Despite the available evidence, Judge Thigpen ruled that the claimant was not capable of returning even to her current job, finding: "The claimant has the residual functional capacity to perform less than a full range of sedentary work.... The claimant is unable to sustain a full eight-hour workday or forty-hour workweek at a regular and consistent basis." Records from her employer show, however, that despite the judge's findings the claimant did, in fact, return to her old job, which she retained as of May 2009, the last records available.

The judge found her reported wages were under SGA, and apparently relied on that fact in support of his determination that the claimant was incapable of working. In fact, the records show the claimant worked just under the limit permissible under SSA regulations to qualify for disability benefits, earning around $1,000 per month. In July 2008, she earned $1,100, indicating she was capable of working a full 40-hour workweek. In awarding benefits, however, the ALJ failed to question the claimant at the hearing about whether she was capable of working more than 35 hours and failed to address in his opinion the conflicting evidence regarding her ability to work.

Alabama Case 66. ALJ Vincent Intoccia awarded SSDI and SSI benefits to a claimant in a bench decision for glaucoma, severe bilateral spinal stenosis, and a back impairment. The case contained a number of pieces of conflicting medical evidence, raising questions about why it was approved. In particular, it contained two medical reports within a month of each other with vastly different conclusions about the claimant's RFC. During the hearing, the judge referenced only the more severe RFC, leaving out reference to the one suggesting the claimant could work.

Further, the claimant made clear to his physician that his unemployment payments were running out and he hoped to be awarded disability benefits. Since unemployment insurance (UI) is reserved for those who *can work*, but cannot find it, receiving UI conflicts with a claim of disability. Rather than properly resolving these conflicts with a thorough hearing, Judge Intoccia held only a brief session at which the claimant did not speak, nor was asked any questions.

Medical Evidence of Record. In February 2007, the claimant saw a physician for a glaucoma evaluation. The doctor concluded that the claimant's "visual field is consistent with his optic nerve exam showing marked constriction of the visual field to probably less than 5 to 10 degrees in the right eye. The left visual field appeared more normal although was slightly depressed superior nasally." The physician concluded the claimant "has severe advanced primary open angle glaucoma with his right eye worse than the left eye." The physician went on to state that "we will have to work together to accomplish successful treatment of [the claimant's] glaucoma condition." Later that year, on September 11, 2007, the claimant's physician stated he did "not rec[ommend a] job working [at] night due to depth perception." He did not state the claimant could not work.

Despite his alleged vision problems, the claimant listed that his physical activities included "take my daughter to school. No problem driving in daytime.... I have to be very careful driving at night. I don't unless I have to." While the claimant stated he had "a severe blind spot on [the] right side," he had no problem standing, walking, or sitting. The claimant also claimed that he was "laid off due to my vision problems" from his job as an equipment operator, which he had held for nearly 12 years, from 1995 to February 2007, presumably because his vision had worsened over time.

Other Income. The claimant reported that he received unemployment insurance from March 2008 through May 2009 in monthly amounts ranging from $844 to $1,055. The claimant also received a pension payment each month under the retirement plan of his former employer of $521.50.

DDS Review. In August 2008, DDS denied the claim based on the claimant was a "younger individual" under the age of 49 and had a high school education, he could perform "medium work range." This included a conclusion that the claimant was under no restrictions for lifting, sitting, standing, pushing, or pulling. Even though "the claimant has not acquired transferable skills," "the overall vocational profile remains favorable for work adjustment to other jobs. Examples of jobs this claimant can perform include: (1) scrap sorter; (2) plugger; and (3) battery stacker." All of these jobs qualified as work under the "medium work range."

DDS denied the claim for disability benefits and explained:

> We have determined that your condition is not severe enough to keep you from working. We considered the medical and other information, your age, education, training, and work

> experience in determining how your condition affects your ability to work.
>
> You state you are disabled because of glaucoma. The evidence shows you have some restrictions and are not able to perform work that you have done in the past. However, based on your age, education and past work experience, you are still able to perform certain types of work.

Post-DDS Medical Evidence. On September 9, 2008 – only a month after the DDS decision – the claimant retained an attorney. Little more than a week later, on September 18, the claimant visited a doctor, but the results of the exam were far different than the DDS determination in August. During this exam, the doctor found the claimant had such a severe back impairment he could barely walk, sit, stand, climb, or lift. The doctor limited the claimant to lifting no more than 5 pounds along with sitting and standing restrictions to no more than 1-3 hours per day.

The next month, the claimant saw an orthopedist on October 28, 2008 for an evaluation of his back. The physician noted "it is my understanding that he is trying to obtain some unemployment benefits for his back problem." At the same time, he told the doctor his "unemployment benefits ran out." The examining physician noted that a prior doctor "ordered an MRI scan … which showed significant grade II spokdylolisthesis at L5-S1 level with severe bilateral formaminal stenosis." The claimant "complain[ed] of right hip and lower leg pain," but the physician noted the claimant "has not had any treatment per se for his back problem" even though he claimed "intermittent problems for the last 15 years."

The physician recommended treatment with medication and a back brace. The physician noted the claimant "may eventually need evaluation to see if he is a surgical candidate for stabilization of his lower back which would give him the best chance for him to do any type of work in the future."

ALJ Hearing. Judge Intoccia made a fully favorable decision under the grid rules, which he made with a "bench decision" – typically reserved for only claimants with obvious disabilities. At the outset of the hearing, the claimant agreed to amend his onset date to October 10, 2008, just before his back exam on October 28, 2008.

The brief hearing included one question to the vocational expert based on the most severe assessment provided on September 18, 2008. Based on this, the VE found the claimant could perform no jobs that existed in the national economy. The judge did not mention the DDS

determination or the October assessment of the claimant's back pain. No questions were asked of the claimant. The ALJ noted that the claimant "has a good work history … [that] goes to his credibility … generally individuals with work histories such as this don't pretend to be disabled unless they really are." His bench decision, by nature, failed to explain how various doctors could come to such different conclusions within a month of one another. Moreover, his decision did not reconcile why the claimant was collecting unemployment insurance, which is statutorily limited to individuals that are able and available to work, while claiming at the same time to be disabled.

Judge Intoccia determined the claimant "is entitled to a Step Five finding within the framework of Grid Rule 201.28." While Grid Rule 201.28 mandates a finding of "not disabled," Judge Intoccia determined the claimant was further limited due to his "inability to complete a scheduled workday, which precludes all competitive employment and, as such, there are no other jobs available that [the claimant] could perform." Therefore, while the grid rules, which considered the claimant's age, education, and previous work experience, directed a finding of "not disabled," the ALJ further limited the claimant's alleged capabilities to find him disabled.

VII. PROPERLY DECIDED CASES SHOW CONTRAST WITH QUESTIONABLE CASES

Despite the problems revealed in this report, the investigation found no apparent problems with a third of the case files. Those properly decided cases were found at all levels of review, from the initial application stage to the ALJ level through the Appeals Council. They properly weighed the medical evidence and made reasonable conclusions based on the entirety of the record. The ALJ decisions were written carefully to show that the conclusions were documented by the relevant exhibits and did not rely on poor or incomplete arguments. These cases demonstrate not only the best practices at the agency, but also help illuminate the problems that need to be tackled by providing an informative contrast.

Alabama Case 50. In 2009, DDS awarded SSI benefits after finding a 17 year-old boy met Medical Listing 112.05(C) due to a full scale IQ score of 59. The case file contained extensive information about the claimant's activities and abilities.

Reports by the Claimant's Parent. When DDS contacted the claimant on April 7, 2009, DDS reported the following additional information:

> Heart murmur/hole in heart – no treatment in 3 years. Is supposed to get [follow up] every two years but Medicaid ran out. His mother said he has no symptoms. [Learning disabled] – has been in special [education] all through school until this year when he was mainstreamed into regular [education] classes. His mom says he gets "easier work." She says he is not as mature as other kids his age and has problems learning.

The contact form also reported "no new information identified." When questioned regarding the claimant's social activities, the claimant's mother responded on agency forms the claimant "does not play sports but he is in the band at school." She also stated "sometimes he won't ask for help if he needs it" and "only finishes his homework because I stay on him to get it done."

Medical Evidence of Record. On September 22, 2003, the claimant, who was in the fifth grade at the time, was re-evaulated to determine if he still qualified for special education classes. During that evaluation, the examiner noted:

> [The claimant] appears to be small physically for his chronological age. He is presently in the 5th grade. [The claimant] report[ed] that he resided in the home with both

> parents. He also stated that he enjoys playing games, jumping on the trampoline, bike riding and riding his skate board.

With regard to the examination the psychologist noted:

> [The claimant] appeared to be attentive and cooperative during the entire testing session. Rapport was easily established and effectively maintained. [The claimant] was eager to complete the assignment. He appeared confident and comfortable in his interactions with the examiner. Overall he appeared to understand instructions given. [The claimant] maintained good interest and effort throughout the entire testing session.

Ultimately, in a decision signed by the claimant's parents and his teachers, the claimant remained in special education classes. The claimant's Individualized Education Plan (IEP) for the 2009-10 school year stated:

> [The claimant] is a 16 year old eleventh grader [in high school] currently resides with both parents. [The claimant] reported having five sisters and two brothers. He enjoys basketball and would like to play baseball. [The claimant] is part of [the] Middle School marching band and [] drum line. He enjoys mathematics and working out. [The claimant] reported that one day he would like to be a personal trainer. He also stated that he takes medication for occasional headaches.

In May 2009, the claimant received a physical consultative exam, which noted the claimant "has seen his cardiologist 1 [year] ago, was told everything is fine and to [follow up] in 2 [years]." The examiner noted the claimant's general appearance was "normal habitus, well developed, and [], well groomed, appears mildly less than state[d] age, no acute distress, color good." The physician continued to review the claimant and noted no issues. The examiner stated the claimant's ventricular septal defect was "stable and without any symptoms."

The agency referred the claimant to a psychologist for a psychological consultative exam on June 19, 2009. The psychologist that conducted the report found, in part:

> Today the patient's chief compliant was "nothing." His mother who came with him reported that his "mental maturity is behind and he has been in special education."

> She also reported that he had a heart murmur. He has had no nervous trouble or depression of any significance. He has never had a behavior problem. He is being treated by [his physician], a pediatrician [], and takes no medication.
>
> His mental retardation was obvious. He was a pleasant, soft-spoken young man. His thoughts and conversation were logical. Associations were intact. His affect was normal. No confusion was noted. He denied anxiety and was not restless. His mood was normal and he rarely cries. His sleep has been good and his appetite fair. His weight has been stable while his energy level is normal. No psychomotor retardation or agitation was noted. His was not suicidal or homicidal. There was no evidence of any hallucinations, delusions or persecutory type fears. No phobias or obsessive compulsive traits or any significance were noted. He was alert.

The CE went on to report the claimant "plays drums in the school band and practices a good deal at home making his mother miserable." The examiner also pointed out the claimant "attends church where his behavior is good." Like at church, his behavior was good at school. The examiner noted his "teachers have had no complaints about his behavior in school and his conduct grades have been good."

The CE also included intelligence testing. The CE documented the claimant received a full scale IQ score of 59 on the Wechsler Adult Intelligence Scale IV, which the examiner concluded placed the claimant "in the mild range of mental retardation at the time of testing."

DDS Determination. DDS determined the claimant met medical listing 112.05(C). A claimant meets this listing with "a valid verbal, performance, or full scale IQ of 59 or less." As stated, in the most recent CE, the child received a full scale IG score of 59. Therefore, DDS relied on proper evidentiary proof to award benefits.

Oklahoma Case 173. This case file is an example of one in which sufficient medical evidence existed and was cited to support a favorable decision by DDS. The claimant alleged disability beginning March 2003, due to a congenital hip defect, hip dysplasia, and degenerative disease in her knees. She submitted detailed subjective documentation providing thorough descriptions of her daily activities, her pain, her treatment, and her medical condition. The claimant also submitted evidence regarding how her alleged impairments affected her daily life and prevented her from being able to work. Each of the claimant's

subjective allegations was also substantiated by objective medical documentation in the case file.

The claimant worked as a legal secretary until March 2003, at which time she had already undergone several hip surgeries and revisions. Specifically, she underwent a left hip arthroplasty in 2000, and several revisions (in 2001, 2002, 2003, and 2005) due to frequent hip dislocations. She underwent a right hip replacement in 2004, and a left hip replacement in 2005. She also fractured her knee in 2005, which required her to make temporary use of an electric scooter. In June 2006, she had spasticity and internal rotation. Her physician prescribed she use a cane and walker prior to her surgeries, as of 2006, she was still using a cane, walking with a limp, and complaining of hip and knee pain. She was taking oxycontin, a powerful pain medication.

In a letter dated December 31, 2003, her treating physician listed her diagnoses, symptoms, treatments, and described in detail her functional abilities, activity limitations, and pain. Her physician's treatment notes consistently stated the claimant was disabled. Even in 2006, when the claimant expressed a desire to return to work, her physician opposed the idea and stated:

> [W]e spent quite a bit of time discussing the pros and cons of her returning to work. I am not at all sure that she will be able to tolerate a fulltime position. I am, in fact, very concerned that she is setting herself up for failure. ... I would like to see her start in a much reduced work load fashion.

DDS properly applied the treating physician's recommendations, and came to an appropriate determination that the claimant was disabled effective March 2003, the date she stopped working. The case file contained sufficient medical evidence, which substantiated each of the treating physician's statements regarding her disability and the claimant's numerous subjective allegations.

Virginia Case 264. This case file presents an instance in which the ALJ properly evaluated the evidence. Here, the ALJ addressed the lack of medical evidence in the record to support the claimant's alleged disability onset date by amending the onset date as supported by the record. The ALJ also properly explained the weight given to the treating physician's opinion. In addition, the ALJ addressed portions of the treating physician's opinion that were inconsistent with the record and provided a sufficient explanation of the weight he was according each opinion in the file. The ALJ's opinion also addressed the claimant's obesity and its effect on her alleged impairments.

The claimant separately applied for SSI and SSDI in April and May 2008, respectively, alleging disability beginning in January 2002, due to lower back and hip pain. After the claim was denied by DDS, the claimant retained an attorney and added an allegation of anxiety. She submitted new evidence in the form of treatment notes from a psychiatrist who began treating her for anxiety in 2009.

Amended Onset Date. The records documented that the claimant sustained a back injury at work in January 2002; she was diagnosed with a bulging disc. Her physician treated the injury with epidural injections in May and June 2002. She returned to light duty work in February 2003, and received a worker's compensation settlement a few months later. There are very few medical records in the file after this date until 2009, following the claimant's SSDI and SSI applications.

Accordingly, ALJ De Monbreum correctly explained during the hearing that the file lacked medical records that supported a claim for disability back to 2002, for either an ongoing back injury or a work impairment due to anxiety. During the hearing, ALJ De Monbreum explained that no medical records substantiated the claimant's allegation of a mental condition prior to April 2009, the date her treatment began. He suggested that she amend her onset date to April 2009. While the progress notes in the claimant's file showed less than disabling levels of this mental impairment, the claimant did proffer a medical source statement from her psychiatrist that opined that the claimant was markedly limited in numerous areas of functioning required to perform work activity.

In his decision, ALJ De Monbreum discussed the claimant's medical progress notes, and specifically cited her treating physician's medical opinion, which found that the claimant had marked limitations in numerous work-related functions. The ALJ discussed the weight he accorded the physician's opinion and addressed weaknesses in the physician's opinion, which opined the claimant was limited in all areas of functioning. The ALJ noted the claimant stayed home and cared for a son and handicapped brother. He pointed out that if she was limited as the doctor suggested, she would not be capable of caring for her son and brother or even attending the ALJ hearing.

The ALJ noted that no other medical opinions existed in the file, and he gave substantial weight to the treating physician after reviewing her treatment notes. While another decision maker may have reached a different conclusion, ALJ De Monbreum sufficiently addressed all relevant factors in this file, and clearly and thoroughly explained his rationale for finding the claimant disabled at a later onset date.

Analysis of Claimant's Obesity. The ALJ also sufficiently explained why he believed the claimant could claim an impairment due to obesity, although she had not alleged that factor. This diagnosis appeared on several medical notes, and the ALJ analyzed this diagnosis as required by SSR 02-1p, which requires ALJs to consider obesity in determining whether claimants have medically determinable impairments that are severe, in determining whether those impairments meet or equal a listing, and in determining a claimant's residual functional capacity. In this case, the ALJ noted the claimant's BMI of 32.0 which rendered her obese by National Institute of Health guidelines. The ALJ's thorough explanation of how obesity is factored into the residual functional capacity indicated that he properly made such a consideration. The Subcommittee investigation found such a thorough analysis of the obesity guidelines absent in most decisions in which obesity was an obvious factor.

Alabama Case 68. The ALJ properly analyzed whether a claimant met one of SSA's Listing of Impairments. Here, the claimant was a 26 year-old man diagnosed with sickle cell disease. Claimants with documented sickle cell disease meet the criteria of Listing 7.05, if they have one of the following: (1) documented painful thrombotic crises at least three times within the past five months prior to adjudication; (2) required extended hospitalization at least three times within the past 12 months prior to adjudication; (3) chronic severe anemia with persistent hematocrit of less than 26 percent; or (4) the disease has caused an impairment to another body system that meets another listed impairment.

In this case, the claimant's treating physician completed a medical statement in support of the claimant's disability application. The statement indicated the claimant's condition met the criteria of Listing 7.05 by asserting the claimant had painful thrombotic crises at least three times within the past five months, had chronic anemia with hematocrit below 26 percent, and required the patient be hospitalized three times within the past year. If the ALJ accepted this statement on its face without verifying whether it was consistent with the medical evidence in the record, the ALJ might have awarded benefits finding that the claimant met the criteria of Listing 7.05.

ALJ David Horton correctly did not apply Listing 7.05, however, because the medical evidence in the record was inconsistent with the statements made by the treating physician. Despite the treating physician's statement, the medical records only showed two hospitalizations within a five month period of time – on November 22, 2008 and December 10, 2008 – not the three required to meet the listing.

Also, the physician's statement regarding hematocrit levels was inconsistent with the medical evidence.

Judge Horton correctly found the claimant did not meet the criteria of the listing and instead analyzed the claim at step five of the sequential evaluation process, related to vocational factors.

Oklahoma Case 150. This case provides an example of an ALJ opinion which properly explained how the medical evidence in the case file supported the ALJ's decision that the claimant's impairments met the criteria of Listing 2.07A and B, Disturbance of Labyrinthine-Vestibular Function. This listing is met if the claimant has frequent attacks of balance disturbance, tinnitus, and progressive loss of hearing with documented hearing loss established by audiometry, and disturbed function of vestibular labyrinth demonstrated by caloric or other vestibular tests.

In her fully favorable decision, ALJ Kim Parrish explained:

> The medical record describes a several year history of progressive hearing loss, episodic dizziness, loss of balance, headaches and tinnitus. Audiogram showed bilateral low frequency hearing loss. Electronmystagmography and bithermal caloric testing showed strong unilateral weakness on the left and right benign paroxysmal positional vertigo. There is objective medical evidence that the claimant is unable to heel, toe or tandem walk due to difficulty with balance, and he has to hold on to the wall during ambulation. Based on careful evaluation of the evidence of record, the Administrative Law Judge finds that there is evidence of a history of frequent attacks of balance disturbance, tinnitus, and progressive loss of hearing as well as disturbed function of vestibular labyrinth demonstrated by caloric or other vestibular tests and hearing loss established by audiometry. The undersigned concludes that the claimant has impairments that meet the criteria of Listing 2.07A and B.

Alabama Case 65. This case provides an example of proper analysis of claimant noncompliance with prescribed treatment. Failure to comply with a physician's treatment orders was rarely addressed by DDS or ALJs in their decision making rationale. Discussed earlier as an example of an ALJ ignoring clear evidence of noncompliance, this case also serves as an example of how examiners at the DDS level properly analyzed a claimant's lack of compliance with prescribed treatment and denied benefits.

In her initial application, the claimant alleged disabling migraine headaches. The treating physician's notes referred to numerous medications the physician prescribed, which the claimant reported did not work. The DDS examiner reviewed the pharmacy print-out showing the drugs filled by the claimant for a 10-month period of time. DDS determined the claimant had never filled the prescriptions for the drugs prescribed to prevent her headaches. DDS concluded the claimant had failed to comply with her prescribed medication regimen.

The DDS examiner also reviewed other medical records and concluded the claimant failed to comply with her scheduled follow-up appointments. The ALJ, however, failed to address this issue, overturned the DDS decision, and awarded benefits.

# # #

REPORT OF CONTACT
(Use ink or typewriter)

ACCOUNT NUMBER AND SYMBOL: [redacted]

TO: ☐ NE ☐ MAT ☐ SE ☐ GL ☐ WN ☐ MAM ☐ ODO ☐ OIO ☐ DDS

NAME OF WAGE EARNER OR SE PERSON: [redacted]

PERSON(S) CONTACTED AND ADDRESSES ☐ WE OR SE PERSON ☐ OTHER (Specify)

CONTACT MADE: ☐ DO ☐ BO ☐ CS ☐ HOME ☐ PHONE: ☐ OTHER

DATE OF CONTACT: 12/11/2006

SUBJECT INITIAL CLAIMANT CONTACT FORM
12/5/-6 CALLED FOR ICC NO ANSWER, SNET LETTER
A. Name: Correct, (x) Yes ( ) No
B. Address: Correct, (x) Yes ( ) No
C. Phone Number: Correct, (x) Yes, ( ) No, ( ) No Phone
D. Third Party name, address, phone number in file: (X) Yes, ( ) No,
If not in file, list third party contact here:

E. Representative Information:

II. Confirm alleged disabling conditions, symptoms, functional restrictions:
(x) Covered in file
( ) Additional Information: **low back pain, no surgery**
BROKE LEFT LEG OVER 20 YRS AGO, IT HURTS

III. Confirm treatment sources, dates, tests, x-rays, medication, etc., include future treatment and identify any sources not previously reported:
A. (X) No new information identified
B. ( ) New Information **HAVE NOT SEEN A DOCTOR IN OVER 5-6 YRS**

IV: The following information was discussed with the claimant or applicant: YES
(1) The role of the disability specialist; (2) General claim information such as name, address, phone number, contact sources; (3)Illnesses, injuries or conditions and functional effect(s); (4)Treatment sources; (5)The date work first stopped due to alleged illnesses, injuries or conditions and any work since filing; (6) The Social Security Administration's definition of disability and general Social Security program requirements; (7) The possibility of an examination(s) to document the case; (8) Appeal rights; (9) Cooperation during the disability claim process

V: Other information provided: YES
(1) Circumstances the claimant or applicant should call; (2) The telephone number and extension; (3) A letter will be sent confirming this phone contact.

SIGNATURE: [redacted]

DISTRICT OFFICE (Name, Address & Code)

☐ CR ☐ FR ☐ SR ☐ CLAIMS CLERICAL ☐ OTHER (Specify)

DATE OF REPORT: 12/11/2006

PAGE 1 OF 1

Form SSA-5002 (8-1981) ef (12-2004)

Permanent Subcommittee on Investigations
EXHIBIT #1a

DISABILITY DETERMINATION SERVICE

CLAI[redacted] Client SSN: [redacted] INT/CON

RE: [redacted]

DOB [redacted]
Phone: [redacted]

Date of Appointment: January 10, 2007 TDN: [redacted]

[redacted] presented for examination on January 10, 2007. She was asked to describe her present medical problems and she replied, "My low back has been bothering me for about two years. It bothers me about every second or third day." (There was no injury.) "Sometimes I can hardly lift anything. Sometimes it feels like there's a light burning sensation there." (There are no radiculopathies.) "When the pain comes on it lasts for about 20 minutes to 30 minutes. I don't need any kind of medicine."

"I broke my left ankle about 20 years ago, when I slipped and fell when I was going into a home to clean it. I had surgery on my left ankle. If I do a lot of walking, it bothers me then. When I do a whole lot of walking it may swell."

Past History: Left ankle surgery. Gravida III, para III - children aged 40 years, 39 years and 37 years - all normal pregnancies and deliveries. No other surgeries or hospitalizations.

Allergies: None known.

Medications: None.

Family History: Mother died at the age of 57; she was on dialysis and had IDDM. She has no knowledge of her father's health status. One sister died at the age of 59; she had some type of cancer.

Functional Enquiry: All other systems were negative.

Social History: She had been married for 40 years. She lives with her husband in a trailer which they own. She last worked in 1996, doing [redacted] in a [redacted] She worked there for five years. "I was told there was no more work for me there to do, and they let me go. I didn't look for any work after that. I could've worked but I didn't." Prior to working at the dance studio she did domestic work for seven years.

Her husband receives a social security disability check of $670 a month. He has HT and DM. She receives food stamps in the amount of

Permanent Subcommittee on Investigations
EXHIBIT #1b

RE: [redacted] Page 2

$139 a month.

She went to school to grade 9. She can read and write "a little."

She smokes two packs of cigarettes a day and drinks about two ounces of gin a day. She claims that she used to use marijuana when she was younger but not recently.

She likes to cook. She loves to go fishing, play dominoes, sew, watch TV - especially the soap operas - and work in her vegetable and flower gardens.

On Examination: She stood 62" tall. She weighed 160 pounds. Her blood pressure was 130/80. Visual assessment using Snellen chart at 20 feet, without glasses: right eye, 20/50; left eye, 20/40; both eyes, 20/25. With glasses: right eye, 20/25; left eye, 20/20; both eyes, 20/20. PERLA. Fundi, negative.

[redacted]y was examined in the presence of our nurse.

She presented with a straight cane in her right hand which was determined not to be required indoors and probably not outside, either. She was asked why she used it and she said, "It's to balance myself." She admits that she has never fallen.

She sat comfortably in the chair, virtually in the same position, for about one and a half hours; she did not appear to be in any distress.

She had a tendency to be very evasive, contradictory, and to exaggerate. She did not appear to be a credible historian.

She wore a short brown wig with blonde highlights. She wore a white short-sleeved T-shirt, blue jogging pants, and white tennis shoes. She stood up from sitting with ease and moved about with reasonable agility. She wore bifocal glasses. She had very poor oral hygiene, with foul breath. Only three very carious teeth remain, with only a small portion of each of those remaining teeth just at or above the gumline.

Chest: Clear to A and P. There were no rales and no rhonchi. There was no prolonged expiratory phase. RR, 12 per min. There was no pulmonary impairment.

CVS: PR, 72 per min RSR. There were no murmurs audible. A few veins were noted, mostly on the left leg, but none were prominent and none were tortuous. There were no stasis changes. All peripheral pulses were palpated. There was no peripheral edema. Her feet were warm and of normal color. The skin of her feet appeared healthy.

GIT: Her abdomen was soft. There were no abnormal masses palpated. There was no tenderness to palpation.

Extremities: There was a full range of motion of her head and neck, her shoulder joints, her elbow joints, her wrist joints, her knee joints, and her right ankle joint. Range of motion of the left ankle joint: dorsiflexion, 15 degrees; plantar flexion, 35 degrees; inversion, 25 degrees; eversion, 15 degrees. Back flexion, 110 degrees. She could touch her toes with her knees straight. Back extension, 25 degrees. Left hip flexion, 120 degrees; extension, 25 degrees.

She walked with a fairly brisk, reasonably coordinated gait, without her cane. She could walk on her heels and toes and squat fully and arise with ease and without any support.

CNS: She was alert and well orientated as to time, place and person. Her recent and remote memory were intact. Cranial nerves II through XII were normal. Sensory exam, normal to all modalities. Motor exam, normal throughout. Cerebellar function, normal. Tone, normal and equal. Deep tendon reflexes were symmetric and equal.

The strength of her major muscle groups including those of her shoulder and pelvic girdles, those of the proximal and distal portions of her upper and lower limbs, her hand grip strength and finger dexterity, were all rated as 5 out of 5. She could make a fist with each hand; she could oppose the thumb to the fingers of each hand. She could button and unbutton clothes, tie shoelaces, pick up small objects, hold a glass, turn a doorknob, etc.

There was no paraspinous cervical, dorsal or lumbar muscle tenderness or spasm.

There were no trigger points palpated across her upper, mid- or low back.

There was no joint which was red, hot, swollen or tender.

There was a vertical scar 3½" long at the medial aspect of her left ankle, and a vertical scar 5½" long at the lateral aspect of her left ankle.

She had dark red chipped nail polish on her fingernails.

<u>X-ray of L-S spine, A-P and lat. (P and I)</u>:

> The bony structures are intact with no evidence of fracture or degenerative lipping. The intervertebral discs are well maintained in height. The hips and sacroiliac joints are normal.

RE: [redacted] Page 4

Summary: Normal A-P and lateral lumbar spine.

The medical evidence of record provided by the DDS was reviewed, and those findings were considered in the overall assessment o[redacted]e [redacted] Based on the medical findings of this examination, I would conclude that she could perform work-related activities such as sitting, standing, walking, lifting, carrying and handling objects, with some minor limitations. There is no problem with hearing or speaking, and she could travel a reasonable distance.

Yours truly,

[redacted]

B.SC.PHM[redacted], M.D.[redacted], D.A.B.D.C.
Diplomate of the American Board of Disability Consultants

PNG:ao

Social Security Administration

EXPLANATION OF DETERMINATION

Name of Claimant	W/E's Name (If CUB or DWB)	SSN	Type of Claim
[redacted]		[redacted]	INDI

The evidence listed was used in evaluating your claim.

In addition to the reports listed, information that you and others provided about how your condition(s) affects your ability to function was considered.

We have determined that your condition is not severe enough to be considered disabling. In deciding this, we considered the medical records, your statements and how your condition affects your ability to work.

You state that you are disabled because of having pain in your back and left leg. It has been determined that your medical condition does not significantly affect your ability to carry out most routine activities. Since your ability to work is not significantly affected, you do not meet the requirements for disability benefits.

If your condition gets worse and keeps you from working, write, call or visit any Social Security office about filing another application.

In evaluating this claim, we have considered and agree with the opinions and comments about the condition(s) considered for disability benefits given by the treating doctor/consulting physician.

Form SSA-4268-U4 (1/85 - AL 5-93)

I1 - BJS

Permanent Subcommittee on Investigations
EXHIBIT #1c

[redacted]

PATIENT: [redacted]
DATE: 03/06/2007

SUBJECTIVE: Hx of headache, last worked in 5 years. Having some low back pain.

OBJECTIVE: Weight 152. BP ____. Lungs are clear. CV normal. Abdomen benign. Extremities normal. Neuro unchanged.

ASSESSMENT:
1. Hypertension, grade 4.

PLAN: Clonidine 0.2 given, BP down to 170/80: Clonidine 0.2 hs, Benicar 20/12.5. F/U in 6-8 weeks. Encourage compliance, awaiting disability.

Permanent Subcommittee on Investigations
EXHIBIT #1d

[redacted]

PATIENT: [redacted]
DATE: 08/13/2007

SUBJECTIVE: History of HTN, OA. On clonidine 0.2 hs, Benicar 40/12.5, colchicine 0.6 daily, is having some low back pain. Missed blood pressure meds past 2 days.

OBJECTIVE: VS: BP 160/100. Lungs are clear. CV normal. Abdomen benign. Extremities stable. Neuro stable.

ASSESSMENT:
1. HTN.
2. OA.

PLAN: Clonidine 0.2 was given. Clonidine 1/2 tablet in the morning, one at night. Benicar 20/12.5, colchicine 0.6. F/U in 2 months or prn.

Permanent Subcommittee on Investigations
EXHIBIT #1e

[redacted]

PATIEN[redacted]
DATE: 12/05/2007

SUBJECTIVE: History of hypertension, gouty arthritis. On clonidine 0.2, Benicar 40/12.5, colchicine 0.6 daily, Lortab 7 nightly. Doing well, no chest pain, shortness of breath, PND, orthopnea. Echocardiogram showed ejection fraction 55%.

OBJECTIVE: VS: Stable. Weight 161, blood pressure 190/90. Lungs are clear. CV normal. Abdomen benign. Extremities - Stable. Neuro stable.

ASSESSMENT:
1. Hypertension, uncontrolled.

PLAN: Add Lopressor 50 mg 1/2 tablet bid, discuss side effects, colchicine 0.6 daily, and clonidine 0.2. F/U in 2 months or prn.

Permanent Subcommittee on Investigations
EXHIBIT #1f

[redacted]

PATIENT: [redacted]
DATE: 01/30/2008

SUBJECTIVE: Patient complaining of poor appetite. Hx of hypertension. On clonidine 0.2. Benicar 40/12.5, colchicine 0.6 mg daily, Lortab 7 nightly. Doing well, no chest pain, SOB.

OBJECTIVE: VS - Weight 158, BP 150/80. Lungs are clear. CV normal. Abdomen - benign. Extremities - Stable. Neuro stable.

ASSESSMENT:
1. Hypertension.
2. Gout.

PLAN: Put on Periactin 4 mg q day, clonidine 0.2 one in the morning, one at night, Benicar 40/12.5, colchicine 0.6 daily, Lopressor bid. Follow up in 6 to 8 weeks or prn. Lab data next time.

Permanent Subcommittee on Investigations
EXHIBIT #1g

[redacted]

PATIENT: [redacted]
DATE: 05/07/2008

SUBJECTIVE: Hx of OA, HTN. On clonidine 0.1, Benicar daily, Lortab 7, Lopressor bid. Doing better.

OBJECTIVE: VS: Stable. LUNGS: Clear. CV: Normal. ABDOMEN: Benign. EXTREMITIES: Stable.

ASSESSMENT:
1. OA.
2. HTN.

PLAN: Continue clonidine 0.2, Benicar daily, colchicine 0.6, Lortab 7 mg daily, Lopressor bid. F/U in 6 weeks, awaiting disability.

[redacted]

Permanent Subcommittee on Investigations
EXHIBIT #1h

SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY ADJUDICATION AND REVIEW

TRANSCRIPT

In the case of

[redacted]

(Claimant)

(Wage Earner) (Leave blank in Title XVI Cases or if name is same as above)

Claim for

Supplemental Security Income

[redacted]

(Social Security Number)

Hearing Held

at

[redacted]

(City, State)

on

May 28, 2008

(Month, Day, Year)

by

Vincent P. Intoccia

(Administrative Law Judge)

APPEARANCES: [redacted] Claimant
[redacted] Attorney for Claimant
[redacted], Vocational Expert

Permanent Subcommittee on Investigations
EXHIBIT #1i

INDEX OF TRANSCRIPT

In the case of:		Account Number
[redacted] Claimant		[redacted]

		Page
Testimony of [redacted]	commencing	2

(The following is a transcript in the hearing held before Vincent P. Intoccia, Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, on May 28, 2008 at Selma, Alabama, in the case of [redacted], Social Security Number [redacted]. The Claimant appeared in person and was represented by [redacted] Attorney. Also present was [redacted] Vocational Expert.)

(The hearing commenced at 11:27 a.m. on May 28, 2008.)

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

ALJ: We'll go ahead and open the claim of [redacted], Social Security Number [redacted] Claimant's present, her representative, [redacted] (Phonetic). We have [redacted] as the VE. And we'll let the record show that this is actually an e-file hearing but it's a little different in that this case is unpulled or unworked. So although we have everything hopefully in the right place as far as the, the record, we don't have any numbers on these exhibits since they're unpulled. And in addition we also have some new exhibits from Bourne (Phonetic) Regional, goes into the F Section. We also have a De Qui Sequi that goes into the D Section. Any objection, question, comments about any of those exhibits, [redacted]

ATTY: No, sir, Your Honor.

ALJ: We'll go ahead then and admit into the record starting with the section entitled Payment Documents Decisions. We have two 831 forms, both received at 1/19/07. The next section is Jurisdictional Documents Notices. We start out with [redacted]s resume, it's receipt dated 5/23/08 through the concurrent L442 form, receipt dated 1/19/07. In the current Development and Temporary we have no exhibit. Non-disability Development, we'll scan in the De Qui Sequi after the

hearing. The Disability Related Development, we have a medication form undated, receipt dated 5/23/08 through the Field Office Disability Report, the 3367, receipt dated 12/4/06. The Medical Records, we start out with [redacted] receipt date 5/23/08 through the CE from [redacted] (Phonetic), receipt dated 1/19/07.

(Exhibits, previously identified, were received into evidence and made a part of the record thereof.)

ALJ: Did you have a separate opening, [redacted]

ATTY: No, sir.

ALJ: And I don't have any questions for [redacted] unless you do?

ATTY: I don't.

ALJ: Swear you in, [redacted]. Can we enter the traditional stipulations for the VE?

ATTY: Yes, sir.

ALJ: Is there anything else you need to know, Doctor?

VE: No, sir.

(The Vocational Expert, [redacted] having been first duly sworn, testified as follows:)

EXAMINATION OF VOCATIONAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q Could you identify the jobs that [redacted] performed during the period at issue by job title, exertional, and skill level?

A Yes, sir. She worked as a [redacted] light, unskilled.

Q No transferable skills?

A No, sir.

Q Consistent with the DOT?

A It is.

Q Let's assume a hypothetical individual, same vocational profile as [redacted] and let's assume someone with a full range of sedentary. Could someone in that situation do that one past job?

A No, sir.

ALJ: Thank you, Doctor. Questions, [redacted]

ATTY: No, sir.

ALJ: You've had the opportunity to look over the ALJ Bench Decision Check Sheet?

ATTY: Yes, sir, I have.

ALJ: Any objection, question, comment?

ATTY: No, sir.

ALJ: We'll go ahead and admit that into Section A of the claim file. We'll have to scan it in after the hearing. And based upon a review of the available evidence of record it appears that a wholly favorable Bench Decision can be issued in this particular claim pursuant to Grid Rule 201.01. There are no other jobs that the Claimant can perform that exist in the national and/or regional economy in significant numbers based upon her Residual Functional Capacity of a full range of sedentary, as coupled with her vocational profile during the period at issue. She's fully insured for Title II purposes through December 31st, 2007. And her onset date is November 22nd, 2006. In addition a more detailed explanation is also found within the ALJ Bench Decision Check Sheet, which is adopted by

reference herein. This concludes the hearing. Thank you. Thank you, Ma'am.

CLMT: Thank you.

(The hearing closed at 11:39 a.m. on May 28, 2008)

C E R T I F I C A T I O N

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded at the hearing held in the case of [redacted] before Administrative Law Judge Vincent P. Intoccia.

Nancy L. Rayser

Nancy L. Rayser, Transcriber
Free State Reporting, Inc.

Caroline Musterman

Caroline Musterman, Proofreader
Free State Reporting, Inc.

Refer T[redacted]

Office of Disability Adjudication and Review
3381 Atlanta Highway
Montgomery, AL 36109-2746

Date: JUN 1 7 2008

[redacted]

NOTICE OF DECISION — FULLY FAVORABLE

I have made a fully favorable decision in your case. My decision is based on your period of disability, disability insurance benefits, and supplemental security income applications filed on November 22, 2006. The component responsible for processing my decision must decide that you meet the non-medical requirements for supplemental security income payments.

I announced the basis for my decision at the hearing held on May 28, 2008. I adopt here those findings of fact and reasons.

To summarize briefly, I found you disabled as of November 22, 2006, because of gouty arthritis, hypertension, urinary tract infections, and osteoarthritis so severe that you are unable to perform any work existing in significant numbers in the national economy.

If you want more information about my decision, you or your representative should file a written request for this information at any local Social Security office or a hearing office. Please include the Social Security number shown above on your request. If you ask for it, we will provide you with a record of my oral decision at the hearing.

This Decision is Fully Favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another office may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

The Appeals Council May Review The Decision On Its Own

The Appeals Council may decide to review my decision even though you do not ask it to do so. To do that, the Council must mail you a notice about its review within 60 days from the date shown above. Review at the Council's own motion could make the decision less favorable or unfavorable to you.

If You Disagree With The Decision

Permanent Subcommittee on Investigations
EXHIBIT #1j

If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you or your representative must request the Appeals Council to review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the Appeals Council, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22041-3255. Please put the Social Security number shown above on any appeal you file.

Time To File An Appeal

To file an appeal, you must file your request for review within 60 days from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time To Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider with your request for review.

How An Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The Council may review your case for any reason. It will review your case if one of the reasons for review listed in our regulations exists. Section 404.970 and 416.1470 of the regulation list these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

If No Appeal And No Appeals Council Review

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (334) 875-0587. Its address is Social Security, 120 Executive Park Lane, Selma, AL 36701.

Vincent P. Intoccia
Administrative Law Judge

JUN 1 7 2008
Date

cc:

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability, Disability Insurance Benefits, and Supplemental Security Income
(Wage Earner)	[redacted] (Social Security Number)

I approve the fee agreement between the claimant and her representative subject to the condition that the claim results in past-due benefits. My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise accepted. I neither approve nor disapprove any other aspect of the agreement.

YOU MAY REQUEST A REVIEW OF THIS ORDER AS INDICATED BELOW

Fee Agreement Approval: You may ask us to review the approval of the fee agreement. If so, write us within 15 days from the day you get this order. Tell us that you disagree with the approval of the agreement and give your reasons. Your representative also has 15 days to write us if he or she does not agree with the approval of the fee agreement. Send your request to this address:

Regional Chief Administrative Law Judge
SSA ODAR Regional Office
Suite 20t10
61 Forsyth Street SW
Atlanta, GA 30303

Fee Agreement Amount: You may also ask for a review of the amount of the fee due to the representative under this approved fee agreement. If so, please write directly to me as the deciding Administrative Law Judge within 15 days of the day you are notified of the amount of the fee due to the representative. Your representative also has 15 days to write me if he/she does not agree with the fee amount under the approved agreement.

You should include the social security number(s) shown on this order on any papers that you send us.

Vincent P. Intoccia
Administrative Law Judge

JUN 1 7 2008

Date

cc: [redacted]

Oral Decision Script

Part 1

After entering this wholly favorable oral decision into the record of hearing, I may issue a written decision that incorporates the oral decision by reference. However, I may not incorporate by reference my oral decision if I determine that it is necessary to change the oral findings or rationale in any way after today's hearing. If a change is necessary, I will issue a full-length written decision.

On November 22, 2006, the claimant protectively filed a Title II application for a period of disability and disability insurance benefits. The claimant also protectively filed a Title XVI application for supplemental security income on November 22, 2006. In these applications, disability is alleged beginning on November 22, 2006. These claims were denied initially and the claimant filed a request for hearing on March 8, 2007.

I am holding a hearing on May 28, 2008, in Selma, AL. [redacted], an impartial vocational expert, has also appeared. The claimant is represented by [redacted], a non-attorney representative.

The issues are whether the claimant is disabled under sections 216(i) and 223 of the Social Security Act; whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met; and whether the claimant is eligible for supplemental security income based on disability under sections 1602 and 1614(a)(3)(A) of the Social Security Act.

Part 2

The claimant has been disabled under the Social Security Act since November 22, 2006, the alleged onset date of disability.

The claimant met the insured status requirements of the Social Security Act on this date.

The claimant has not engaged in substantial gainful activity since the established onset date. The claimant has not worked for pay or profit after this date.

The claimant has the following severe impairment(s) or combination of impairments: gouty arthritis, hypertension, urinary tract infections, and osteoarthritis.

The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1.

The claimant has the residual functional capacity to perform less than the full range of sedentary work.

The claimant has past relevant work but the claimant's residual functional capacity is

inconsistent with the demands of this work as actually and normally performed. Accordingly, the claimant is unable to perform past relevant work.

Once the claimant has established that she has no past relevant work or cannot perform any past relevant work because of her impairments, the burden shifts to the Commissioner to show that there are jobs existing in significant numbers in the national economy which the claimant can perform, consistent with her medically determinable impairments, functional limitations, age, education, and work experience.

The claimant was of advanced age on the date disability is established.

The claimant has a limited education.

The claimant has an unskilled work background.

Considering the claimant's age, education, work experience, and residual functional capacity, no jobs exist in significant number in the national economy that the claimant could perform. This conclusion is based on direct application of Medical-Vocational Rule 201.01.

Part 3

Based on the application for a period of disability and disability insurance benefits protectively filed on November 22, 2006, the claimant has been disabled under sections 216(i) and 223 of the Social Security Act beginning on November 22, 2006.

Based on the application for supplemental security income protectively filed on November 22, 2006, the claimant has been disabled under section 1614(a)(3)(A) of the Social Security Act beginning on November 22, 2006.

The component of the Social Security Administration responsible for authorizing supplemental security income will advise the claimant regarding the nondisability requirements for these payments, and if eligible, the amount and the months for which payment will be made.

ALJ Bench Decision Checksheet - Print Version

Claimant Name: [redacted]

Application Date: 11-22-06 Title: (5)2+16 Hearing Date: 5-28-08

Date Last Insured: 12-31-07 Date First Insured: _____

Established Onset Date: 11-22-06

Prior Application ___Reopened ___Not Reopened ✓ N/A

Prior Application Date(s): T2_____ SSI_____

Date of Initial Determination: T2_____ SSI_____

Reason for Reopening: Within one year Grounds for reopening at any time

Good cause/new and material evidence (within 2 or 4 years)_____

_____Work After Onset ✓ None

____UWA

____TWP [See 20 C.F.R. §§ 404.1592(d)(2)(iii) and (iv).]

____Not SGA _____

Severe Impairment(s) (singly or in combination): htn

Gouty Arthritis

UTI

OA

Impairment(s) MEET Listing: # _____ ____N/A

Impairment(s) EQUAL Listing: # _____ ME ____N/A.

Testimony/_____

Interrogatories: Section A

Mental Impairment Analysis: _____/for Listings_____

Restriction of Activities of Daily Living None Mild Moderate Marked Extreme

Difficulties Maintaining Social Functioning None Mild Moderate Marked Extreme

Difficulties Maintaining Concentration-Pace None Mild Moderate Marked Extreme
Episodes of Decompensation None One or two Three Four or More

Part C Limit'ns (2 yrs med. hist. & more than minimal limitation) (12.02, 12.03, 12.04) Yes No

_____Residual disease process with marginal adjustment so that minimal changes cause

decompensation

_____Current history 1+years in highly supportive living arrangement with continuing
need for same

_____Repeated episodes of decompensation, each of extended duration

12.06: Specify limitations:

_____

_____

Residual Functional Capacity/Physical - Exertional and Non-exertional
Limitations*1 _X_Sed ____ Lt. ___ Med. ____ Hvy.

Mental Residual Functional Capacity*2:

____SEE AS ATTACHED HEREIN: _____ *1 ✓ N/A and _____*2 ✓ N/A.

Past Relevant Work:

HOUSEKEEPER - LT - UNSK - NO TRANS.

Consistent with the DOT - yes.

✓ Unskilled No transferable skills/_____Semi-skilled No

Transferable skills_____ Semi-skilled _____Skilled /_____Transferable Skills

Not Material _____/_____

Medical-Vocational Rule # 201.01 Directs

Medical-Vocational Rule # _____ Framework VE Testimony = No Jobs

Social Security Ruling # _____

Rationale for Decision (Include assessment of credibility and medical source opinion): Pursuant to Hypo 1 (Full range of SED), the CL is entitled to a Step 5 finding, via GRID Rule: 201.01

Recommend Representative Payee N/A

Medical reexamination in N/A year(s) Other recommendations: _____

Evidence of Workers Compensation Claim/Payment/Disability Insurance Payment/VA Benefits/Disability Retirement N/A

Fee Agreement Approved. Representative Name: _____

Fee Agreement Denied. Reason: N/A

Other: No testimony from the CL needed.

Vincent P. Intoccia
Administrative Law Judge

5-28-07
Date

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability, Disability Insurance Benefits, and Supplemental Security Income
(Wage Earner)	[redacted] (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before the undersigned on a request for hearing dated January 9, 2009 (20 CFR 404.929 *et seq.* and 416.1429 *et seq.*). The evidence of record supports a fully favorable decision; therefore no hearing has been held (20 CFR 404.948(a) and 416.1448(a)). The claimant is represented by [redacted] an attorney.

The claimant is alleging disability since August 15, 2008.

ISSUES

The issue is whether the claimant is disabled under sections 216(i), 223(d) and 1614(a)(3)(A) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

With respect to the claim for a period of disability and disability insurance benefits, there is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2012. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful review of the entire record, the undersigned finds that the claimant has been disabled from August 15, 2008 through the date of this decision. The undersigned also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is

Permanent Subcommittee on Investigations
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disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, or work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f) and 416.920(f)). If the claimant has the residual functional capacity to do her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the undersigned must determine whether the claimant is able to do any other work considering her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, she is not disabled. If the claimant is not able to do other work and meets the duration requirement, she is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is

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not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g), 404.1560(c), 416.912(g) and 416.960(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. The claimant's date last insured is December 31, 2012.

2. The claimant has not engaged in substantial gainful activity since August 15, 2008, the alleged onset date (20 CFR 404.1520(b), 404.1571 *et seq.*, 416.920(b) and 416.971 *et seq.*).

3. The claimant has the following severe impairment(s): cervical spondylosis, fibromyalgia, tension headaches, migraine headaches and history of depression with anxiety (20 CFR 404.1520(c) and 416.920(c)).

The above impairment(s) causes more than minimal functional limitations.

4. The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).

The claimant has the following degree of limitation in the broad areas of functioning set out in the disability regulations for evaluating mental disorders and in the mental disorders listings in 20 CFR, Part 404, Subpart P, Appendix 1: mild restriction in activities of daily living, mild difficulties in maintaining social functioning, moderate difficulties in maintaining concentration, persistence or pace, and no episodes of decompensation, each of extended duration.

5. The claimant has the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(a) and 416.967(a) except for those job functions that are outside of the parameters of [redacted] assessment as noted below.

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and 416.929 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and 416.927 and SSRs 96-2p, 96-6p and 06-3p.

[redacted] shows a history of treatment of the claimant. On October 30, 2008, the claimant was treated for and diagnosed with chronic tension headaches and fibromyalgia.

[redacted] pain specialist, reflects treatment of the claimant since 2008. He provided claimant with cervical injections due to cervical spondylosis. On February 16, 2009, he opined that claimant can lift and/or carry up to ten pounds occasionally or less frequently, sit for three to

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four hours during an 8-hour workday; and stand and walk for two to three hours during an 8-hour workday. [redacted] tated that the claimant is unable to perform pushing and pulling movements, climbing and balancing, bending and/or stooping movements or reaching. He opined that pain is present to such an extent to be distracting to the adequate performance of daily activities or work. It is also noted that physical activity, such as walking, standing, sitting, bending, stooping, and moving of extremities greatly increase pain to such a degree as to cause distraction from task or total abandonment of task. He further stated that the drug side effects can be expected to be severe and limit effectiveness due to distraction, inattention, drowsiness.

Medical records from [redacted], neurologist, also reflect history of migraine headaches and depression with anxiety.

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The State agency medical consultant's physical assessment and psychological consultant's mental assessment are given little weight because another medical opinion is more consistent with the record as a whole and evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants.

Pursuant to 20 CFR 404.1527(d)(2) and 20 CFR 416.927(d)(2) and Social Security Ruling 96-2p, generally more weight is given to the opinions from treating sources. If the treating source's opinion on the issue of severity of impairment is well supported by medical evidence, it is given controlling weight. Further, the Eleventh Circuit has held that an Administrative Law Judge must accord substantial weight to the opinion of the claimant's treating physician unless good cause is shown to the contrary. Broughton v. Heckler, 776 F.2d 960 (11th Cir. 1985). In this case, [redacted] opinion is supported by medical evidence.

6. The claimant is unable to perform any past relevant work (20 CFR 404.1565 and 416.965).

The demands of the claimant's past relevant work exceed the residual functional capacity.

7. The claimant was a younger individual age 18-44 on the established disability onset date (20 CFR 404.1563 and 416.963).

8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564 and 416.964).

9. The claimant's acquired job skills do not transfer to other occupations within the residual functional capacity defined above (20 CFR 404.1568 and 416.968).

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10. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c), 404.1566, 416.960(c), and 416.966).

In determining whether a successful adjustment to other work can be made, the undersigned must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11). When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decisionmaking unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If the claimant has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decisionmaking (SSR 85-15).

If the claimant had the residual functional capacity to perform the full range of sedentary work, considering the claimant's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.28. However, the additional limitations so narrow the range of work the claimant might otherwise perform that a finding of "disabled" is appropriate under the framework of this rule. This conclusion is supported by Social Security Ruling(s) 96-8p.

11. The claimant has been under a disability as defined in the Social Security Act since August 15, 2008, the alleged onset date of disability (20 CFR 404.1520(g) and 416.920(g)).

DECISION

Based on the application for a period of disability and disability insurance benefits protectively filed on September 26, 2008, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act since August 15, 2008.

Based on the application for supplemental security income protectively filed on September 26, 2008, the claimant has been disabled under section 1614(a)(3)(A) of the Social Security Act since August 15, 2008.

The component of the Social Security Administration responsible for authorizing supplemental security income will advise the claimant regarding the nondisability requirements for these payments, and if eligible, the amount and the months for which payment will be made.

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Medical improvement is expected with appropriate treatment. Consequently, a continuing disability review is recommended in 18 months.

/s/ Charles A. Thigpen

Charles A. Thigpen
Administrative Law Judge

October 15, 2009
Date

PHYSICAL SUMMARY

SSN: [redacted]

NAME: [redacted]

DATE 12/08/2008

Case rating: 02

35 yo woman alleges intractable migraine. TP neurologist I [redacted] indicates Cl prescribed 1.5 g. Keppra and Inderal 160 mg daily. Inderal started one year ago. In the past 10 monthsl Cl has obtained a 2 month supply of Inderal and there is no indication in the pharmacy print out of Cl ever obtaining the Keppra. These drugs are intended as preventive therapy and body of evidence in MER indicates very poor compliance in treatment. Cl was due back for follow up 9/08 and as of `10/23/08 receipt of TP records Cl had not returned for follow up.

☒ THESE FINDINGS COMPLETE THE MEDICAL PORTION OF THE DISABILITY DETERMINATION

SIGNATURE [redacted]

SPECIALTY 20

Permanent Subcommittee on Investigations
EXHIBIT #2b

Social Security Administration

EXPLANATION OF DETERMINATION

NCD

Name of Claimant	W/E's Name (If CDB or DWB)	SSN	Type of Claim
[redacted]		[redacted]	INDIB

The evidence listed was used in evaluating your claim. Additional reports were not obtainable.

[redacted] INC Report Received 10/29/08
[redacted] Report Received 10/20/08
[redacted] Report Received 10/23/08
[redacted] R Report Received 10/23/08
[redacted] C Report Received 11/05/08
[redacted] OF Report Received 10/21/08
[redacted] R LLC Report Received 11/05/08

In addition to the reports listed, information that you and others provided about how your condition(s) affects your ability to function was considered.

We have determined that your condition is not severe enough to be considered disabling. In deciding this, we considered the medical records, your statements and how your condition affects your ability to work.

You state that you are disabled because of migraines and depression. It has been determined that your medical condition does not significantly affect your ability to carry out most routine activities. Since your ability to work is not significantly affected, you do not meet the requirements for disability benefits.

If your condition gets worse and keeps you from working, write, call or visit any Social Security office about filing another application.

SSA-4268-U6 (1/85 - At 5-93)

I1 - NCD

Permanent Subcommittee on Investigations
EXHIBIT #2c

Page 1 ***** INSURANCE STATEMENT ***** Printed: Wednesday, October 29, 2008 10:06:21 AM

Patient: [redacted]0000
Statement Date Beginning 06/01/2007, Ending 10/29/2008

Rx #	Doctor	Drug	NDC	Qty	Written	Fill Date	Refill	Price	Tax
1863450	[redacted]	ALPRAZOLAM TABS .25MG	00781-1061-10	60	06/14/2007	06/14/2007	0	******4.57	0.00
Insurance #1: BCBS		Authorization number: 071654422663004999							
1857365	[redacted] T	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	30	05/17/2007	06/22/2007	1	******4.10	0.00
Insurance #1: BCBS		Authorization number: 071735249827001999							
1868972	[redacted]	ALPRAZOLAM 0.5MG GENEVA	00781-1077-10	60	07/10/2007	07/10/2007	0	******5.09	0.00
Insurance #1: BCBS		Authorization number: 071916138188006999							
1857365	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	30	05/17/2007	07/16/2007	2	******4.10	0.00
Insurance #1: BCBS		Authorization number: 071974953652008999							
1863450	[redacted]	ALPRAZOLAM TABS .25MG	00781-1061-10	60	06/14/2007	07/16/2007	1	******4.57	0.00
Insurance #1: BCBS		Authorization number: 071974955825003999							
1857366	[redacted]	AMBIEN CR 12.5MG TABLETS	00024-5521-31	30	05/17/2007	07/19/2007	2	130.25	0.00
1857363	[redacted]	MCTZ 12.5MG CAPSULES	00591-0347-01	30	05/17/2007	07/25/2007	1	******7.10	0.00
Insurance #1: BCBS		Authorization number: 072065749741005999							
1868972	[redacted]	ALPRAZOLAM 0.5MG GENEVA	00781-1077-10	60	07/10/2007	07/30/2007	1	******5.09	0.00
Insurance #1: BCBS		Authorization number: 072116096808008999							
1875783	[redacted]	HYDROCODONE & APAP 10/500MG	00591-0540-05	30	08/08/2007	08/08/2007	0	******6.49	0.00
Insurance #1: BCBS		Authorization number: 072205367197006999							
1875782	[redacted]	MAXALT 10MG TAB (12'S)	00006-0267-12	9	08/08/2007	08/08/2007	0	*****33.66	0.00
Insurance #1: BCBS		Authorization number: 072205361001004998							
1876714	[redacted]	PROMETHAZINE 25MG*GENEVA	00591-5307-10	30	08/13/2007	08/13/2007	0	*****13.70	0.00
Insurance #1: BCBS		Authorization number: 072254296439002999							
1857365	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	30	05/17/2007	08/17/2007	3	******4.10	0.00
Insurance #1: BCBS		Authorization number: 072293047967005999							
1863450	[redacted] T	ALPRAZOLAM TABS .25MG	00781-1061-10	60	06/14/2007	08/17/2007	2	******4.57	0.00
Insurance #1: BCBS		Authorization number: 072293050259005999							
1857365	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	30	05/17/2007	09/04/2007	4	******4.10	0.00
Insurance #1: BCBS		Authorization number: 072476742506006999							
1863450	[redacted]	ALPRAZOLAM TABS .25MG	00781-1061-10	60	06/14/2007	09/06/2007	3	******4.57	0.00
Insurance #1: BCBS		Authorization number: 072495184440003999							
1883492	[redacted]	ZONISAMIDE CAP 100MG	60505-2547-01	60	09/08/2007	09/08/2007	0	*****21.47	0.00
Insurance #1: BCBS		Authorization number: 072515571442004999							
1885098	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	30	09/14/2007	09/14/2007	0	******4.10	0.00
Insurance #1: BCBS		Authorization number: 072575122398005999							
1885097	[redacted]	HYDROXYZINE 50MG TABS	16714-0083-04	60	09/14/2007	09/14/2007	0	*****15.00	0.00
Insurance #1: BCBS		Authorization number: 072575115861008998							
1868972	[redacted]	ALPRAZOLAM 0.5MG GENEVA	00781-1077-10	60	07/10/2007	09/23/2007	2	******5.09	0.00
Insurance #1: BCBS		Authorization number: 072665124943006999							
1857365	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	30	05/17/2007	09/23/2007	5	******4.10	0.00
Insurance #1: BCBS		Authorization number: 072665126158007999							
1890684	[redacted]	ZOLPIDEM 10MG TABS	60505-2605-08	15	10/05/2007	10/05/2007	0	69.50	0.00
1883492	[redacted]	ZONISAMIDE CAP 100MG	60505-2547-01	60	09/08/2007	10/11/2007	1	*****21.47	0.00
Insurance #1: BCBS		Authorization number: 072844572241004999							
1863450	[redacted]	ALPRAZOLAM TABS .25MG	00781-1061-10	60	06/14/2007	10/11/2007	4	******4.57	0.00
Insurance #1: BCBS		Authorization number: 072844573876008999							

Permanent Subcommittee on Investigations
EXHIBIT #2d

Page 2 ***** INSURANCE STATEMENT ***** Printed: Wednesday, October 29, 2008 10:06:21 AM

Patient: [redacted]0000
Statement Date Beginning 06/01/2007, Ending 10/29/2008

Rx #	Doctor	Drug	NDC	Qty	Written	Fill Date	Refill	Price	Tax
1892555	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	30	09/28/2007	10/12/2007	0	******4.10	0.00
Insurance #1: BCBS		Authorization number: 072855178532003999							
1895229	[redacted]	HYDROCODONE & APAP 10/500MG	00591-0540-05	30	10/22/2007	10/22/2007	0	******6.49	0.00
Insurance #1: BCBS		Authorization number: 072956706973006999							
1897255	[redacted]	PROPRANOLOL LA 60MG CAPS	49884-0282-01	30	10/30/2007	10/30/2007	0	*****15.00	0.00
Insurance #1: BCBS		Authorization number: 073034710025007999							
1897256	[redacted]	MAGNESIUM OXIDE 400MG	68585-0006-12	60	10/30/2007	10/30/2007	0	9.75	0.00
1898662	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	10	11/05/2007	11/05/2007	0	******2.70	0.00
Insurance #1: BCBS		Authorization number: 073094301130008999							
1901018	[redacted]	TEMAZEPAM 15MG CAPS (15)	00378-4010-01	30	11/13/2007	11/13/2007	0	23.75	0.00
1901104	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	30	11/13/2007	11/13/2007	0	******4.10	0.00
Insurance #1: BCBS		Authorization number: 073176201135005999							
1902696	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	30	11/20/2007	11/20/2007	0	******4.10	0.00
Insurance #1: BCBS		Authorization number: 073243026448003999							
1907911	[redacted]	PROPRANOLOL LA 120MG CAPS	49884-0329-01	30	12/10/2007	12/11/2007	0	*****15.00	0.00
Insurance #1: BCBS		Authorization number: 073454498960002999							
1907912	[redacted]	MIGRANAL NS 4MG/ML 8CT	00187-0245-03	1	12/10/2007	12/11/2007	0	*****63.76	0.00
Insurance #1: BCBS		Authorization number: 073454503128007997							
1912928	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	30	01/02/2008	01/02/2008	0	******4.31	0.00
Insurance #1: BCBS		Authorization number: 080025175550008999							
1912929	[redacted]	AMOXICILLIN 500MG CAPS*	63304-0655-05	21	01/02/2008	01/02/2008	0	******3.85	0.00
Insurance #1: BCBS		Authorization number: 080025176666007999							
1914074	[redacted]	PCM LA TABS	60258-0280-01	14	01/07/2008	01/07/2008	0	******7.29	0.00
Insurance #1: BCBS		Authorization number: 080073376821007999							
1912929	[redacted]	AMOXICILLIN 500MG CAPS*	63304-0655-05	21	01/02/2008	01/14/2008	1	******3.85	0.00
Insurance #1: BCBS		Authorization number: 080145230958006999							
1912928	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	30	01/02/2008	01/22/2008	1	******4.31	0.00
Insurance #1: BCBS		Authorization number: 080225189855005999							
1924017	[redacted]	TEMAZEPAM 15MG CAPS (15)	00378-4010-01	30	02/08/2008	02/08/2008	0	23.50	0.00
1909207	[redacted]	IMITREX 0.5ML 2S REFILL	00173-0478-00	1	12/15/2007	02/11/2008	0	*****35.80	0.00
Insurance #1: BCBS		Authorization number: 080423079684001999							
1926935	[redacted]	AMOXIL/CLAV 875/125 TABS	63304-0509-01	14	02/18/2008	02/18/2008	0	*****15.00	0.00
Insurance #1: BCBS		Authorization number: 080496318981006999							
1912928	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	30	01/02/2008	02/21/2008	2	******4.31	0.00
Insurance #1: BCBS		Authorization number: 080522954318007999							
1937417	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	28	03/26/2008	03/26/2008	0	******4.16	0.00
Insurance #1: BCBS		Authorization number: 080863911448002999							
1937924	[redacted]	PHENTERMINE HCL 30 MG	00185-5000-01	15	03/28/2008	03/28/2008	0	19.50	0.00
1909207	[redacted]	IMITREX 0.5ML 2S REFILL	00173-0478-00	1	12/15/2007	03/28/2008	1	*****37.86	0.00
Insurance #1: BCBS		Authorization number: 080886696070004999							
1943107	[redacted]	PHENTERMINE HCL 30 MG	00185-5000-01	15	04/16/2008	04/16/2008	0	15.22	0.00
1943266	[redacted]	DOXYCYCLINE 100MG CAPS *	00172-2965-70	20	04/17/2008	04/17/2008	0	******3.76	0.00
Insurance #1: BCBS		Authorization number: 081083820539005999							
1943267	[redacted]	HYDROCODONE/APAP 5/500	00591-0349-05	16	04/17/2008	04/17/2008	0	******3.41	0.00

Page 3 ***** INSURANCE STATEMENT ***** Printed: Wednesday, October 29, 2008 10:06:21 AM

Patient: [redacted]
Statement Date Beginning 06/01/2007, Ending [redacted]

Rx #	Doctor	Drug	NDC	Qty	Written	Fill Date	Refill	Price	Tax
Insurance #1: BCBS		Authorization number: 081083837954001999							
1948674	[redacted]	CLONAZEPAM 0.5MG TABLETS	00093-0832-10	20	05/07/2008	05/07/2008	0	******3.76	0.00
Insurance #1: BCBS		Authorization number: 081284196144002999							
1949001	[redacted]	TEMAZEPAM 30 MG (15)	00781-2202-01	12	05/08/2008	05/08/2008	0	15.00	0.00
1948999	[redacted]	BUTAL/ASP/CAF 50/325/40 TABS	00143-1783-01	12	05/08/2008	05/08/2008	0	******5.30	0.00
Insurance #1: BCBS		Authorization number: 081294455673004999							
1950324	[redacted]	INNOPRAN XL 120MG CAPSULES	65726-0251-10	30	05/13/2008	05/13/2008	0	*****50.00	0.00
Insurance #1: BCBS		Authorization number: 081347013757003999							
1951668	[redacted]	CLONAZEPAM 1MG TABLETS	00093-0833-10	30	05/19/2008	05/19/2008	0	******5.49	0.00
Insurance #1: BCBS		Authorization number: 081406725151001999							
1951668	[redacted]	CLONAZEPAM 1MG TABLETS	00093-0833-10	30	05/19/2008	06/11/2008	1	******5.49	0.00
Insurance #1: BCBS		Authorization number: 081633108045002999							
1958637	[redacted]	MEPERIDINE 50MG (60)	00054-4595-25	12	06/17/2008	06/17/2008	0	******7.54	0.00
Insurance #1: BCBS		Authorization number: 081695141004009999							
1950324	[redacted]	INNOPRAN XL 120MG CAPSULES	65726-0251-10	30	05/13/2008	06/25/2008	1	*****50.00	0.00
Insurance #1: BCBS		Authorization number: 081774010308006999							
1949001	[redacted]	TEMAZEPAM 30 MG (15)	00781-2202-01	12	05/08/2008	06/28/2008	1	15.00	0.00
1962040	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	20	07/01/2008	07/01/2008	0	******3.54	0.00
Insurance #1: BCBS		Authorization number: 081836168464008999							
1962038	[redacted]	CLONAZEPAM 1MG TABLETS	00093-0833-10	30	07/01/2008	07/01/2008	0	******5.49	0.00
Insurance #1: BCBS		Authorization number: 081836170498003999							
1962040	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	20	07/01/2008	07/14/2008	1	******3.54	0.00
Insurance #1: BCBS		Authorization number: 081965684101001999							
1966682	[redacted]	ALPRAZOLAM TABS 1MG GENEVA	00781-1079-10	60	07/21/2008	07/21/2008	0	******6.15	0.00
Insurance #1: BCBS		Authorization number: 082036208633008999							
1966680	[redacted]	HCTZ 25MG	00603-3856-32	30	07/21/2008	07/21/2008	0	******4.38	0.00
Insurance #1: BCBS		Authorization number: 082036210047002999							
1966683	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	20	07/21/2008	07/31/2008	0	******3.54	0.00
Insurance #1: BCBS		Authorization number: 082137037052007999							
1966685	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	20	07/21/2008	08/13/2008	1	******3.54	0.00
Insurance #1: BCBS		Authorization number: 082266649714001999							
1966682	[redacted]	ALPRAZOLAM TABS 1MG GENEVA	00781-1079-10	60	07/21/2008	08/22/2008	1	******6.15	0.00
Insurance #1: BCBS		Authorization number: 082357023385003999							
975573	[redacted]	TOBRADEX 3.5G 0 0	00065-0648-35	1	08/27/2008	08/27/2008	0	*****30.00	0.00
Insurance #1: BCBS		Authorization number: 082406724065006999							
976125	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	20	08/29/2008	08/29/2008	0	******3.54	0.00
Insurance #1: BCBS		Authorization number: 082426298337008999							
966682	[redacted]	ALPRAZOLAM TABS 1MG GENEVA	00781-1079-10	60	07/21/2008	09/23/2008	2	******6.15	0.00
Insurance #1: BCBS		Authorization number: 082676190398003999							
982623	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	20	09/25/2008	09/25/2008	0	******3.54	0.00
Insurance #1: BCBS		Authorization number: 082696175451001999							
982623	[redacted]	HYDROCOD/ACET 7.5/500 (60)	00603-3882-28	20	09/25/2008	10/23/2008	1	******3.54	0.00
Insurance #1: BCBS		Authorization number: 082974442845007999							
966682	[redacted]	ALPRAZOLAM TABS 1MG GENEVA	00781-1079-10	60	07/21/2008	10/23/2008	3	******6.15	0.00

Page 4 ***** INSURANCE STATEMENT ***** Printed: Wednesday, October 29, 2008 10:06:21 AM

Patient: [redacted] 0000

Statement Date Beginning 06/01/2007, Ending 10/29/2008

Rx #	Doctor	Drug	NDC	Qty	Written	Fill Date	Refill	Price	Tax
Insurance #1: BCBS		Authorization number: [redacted]							
1990066	[redacted]	ZOLPIDEM 10MG TABS	60505-2605-08	20	10/27/2008	10/27/2008	0	15.00	0.00
						Totals		$978.07	$0.00

Pharmacist: [redacted]

Store: [redacted]

Federal tax ID: [redacted]

Service Provider ID: [redacted]

Form Approved
OMB No. 0960-0413

PSYCHIATRIC REVIEW TECHNIQUE

Name	SSN
[redacted]	[redacted]
NH (If different from above)	SSN
	- -

I. MEDICAL SUMMARY

A. Assessment is from: _____ **to** _____

B. Medical Disposition(s):

1. ☐ No Medically Determinable Impairment
2. ☒ Impairment(s) Not Severe
3. ☐ Impairment(s) Severe But Not Expected to Last 12 Months
4. ☐ Meets Listing _____ _____ _____ (Cite Listing)
5. ☐ Equals Listing _____ _____ _____ (Cite Listing)
6. ☐ RFC Assessment Necessary
7. ☐ Coexisting Nonmental Impairment(s) that Requires Referral to Another Medical Specialty
8. ☐ Insufficient Evidence

C. Category(ies) Upon Which the Medical Disposition is Based:

1. ☐ 12.02 Organic Mental Disorders
2. ☐ 12.03 Schizophrenic, Paranoid and Other Psychotic Disorders
3. ☒ 12.04 Affective Disorders
4. ☐ 12.05 Mental Retardation
5. ☒ 12.06 Anxiety-Related Disorders
6. ☐ 12.07 Somatoform Disorders
7. ☐ 12.08 Personality Disorders
8. ☐ 12.09 Substance Addiction Disorders
9. ☐ 12.10 Autism and Other Pervasive Developmental Disorders

☒ **These findings complete the medical portion of the disability determination.**

MC/PC's Signature	Date
[redacted]	12/09/2008
MC/PC's Printed Name	Code
[redacted]	37

Permanent Subcommittee on Investigations
EXHIBIT #2e

Form SSA-2506-BK (06-2001) Destroy Prior Editions

II. **DOCUMENTATION OF FACTORS THAT EVIDENCE THE DISORDER**

A. 12.02 Organic Mental Disorders

☐ Psychological or behavioral abnormalities associated with a dysfunction of the brain ... as evidenced by at least one of the following:

1. ☐ Disorientation to time and place
2. ☐ Memory impairment
3. ☐ Perceptual or thinking disturbances
4. ☐ Change in personality
5. ☐ Disturbance in mood
6. ☐ Emotional lability and impairment in impulse control
7. ☐ Loss of measured intellectual ability of at least 15 IQ points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

B. 12.03 Schizophrenic, Paranoid and Other Psychotic Disorders

☐ Psychotic features and deterioration that are persistent (continuous or intermittent), as evidenced by at least one of the following:

1. ☐ Delusions or hallucinations
2. ☐ Catatonic or other grossly disorganized behavior
3. ☐ Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
   a. ☐ Blunt affect, or
   b. ☐ Flat affect, or
   c. ☐ Inappropriate affect
4. ☐ Emotional withdrawal and/or isolation

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

C. 12.04 Affective Disorders

☐ Disturbance of mood, accompanied by a full or partial manic or depressive syndrome, as evidenced by at least one of the following:

1. ☐ Depressive syndrome characterized by at least four of the following:
   - a. ☐ Anhedonia or pervasive loss of interest in almost all activities, or
   - b. ☐ Appetite disturbance with change in weight, or
   - c. ☐ Sleep disturbance, or
   - d. ☐ Psychomotor agitation or retardation, or
   - e. ☐ Decreased energy, or
   - f. ☐ Feelings of guilt or worthlessness, or
   - g. ☐ Difficulty concentrating or thinking, or
   - h. ☐ Thoughts of suicide, or
   - i. ☐ Hallucinations, delusions or paranoid thinking
2. ☐ Manic syndrome characterized by at least three of the following:
   - a. ☐ Hyperactivity, or
   - b. ☐ Pressures of speech, or
   - c. ☐ Flight of ideas, or
   - d. ☐ Inflated self-esteem, or
   - e. ☐ Decreased need for sleep, or
   - f. ☐ Easy distractibility, or
   - g. ☐ Involvement in activities that have a high probability of painful consequences which are not recognized, or
   - h. ☐ Hallucinations, delusions or paranoid thinking
3. ☐ Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)

☒ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above

Disorder Depression w/ anxiety per TP

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment (explain in Part IV, Consultant's Notes, if necessary):

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

D. 12.05 Mental Retardation

☐ Significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22, with one of the following:

1. ☐ Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow instructions such that the use of standardized measures of intellectual functioning is precluded*
2. ☐ A valid verbal, performance, or full scale IQ of 59 or less*
3. ☐ A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function*
4. ☐ A valid verbal, performance, or full scale IQ of 60 through 70*

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

*NOTE: Items 1, 2, 3, and 4 correspond to listings 12.05A, 12.05B, 12.05C, and 12.05D, respectively.

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

E. 12.06 Anxiety-Related Disorders

☐ Anxiety as the predominant disturbance or anxiety experienced in the attempt to master symptoms, as evidenced by at least one of the following:

1. ☐ Generalized persistent anxiety accompanied by three of the following:
   - a. ☐ Motor tension, or
   - b. ☐ Autonomic hyperactivity, or
   - c. ☐ Apprehensive expectation,
   - d. ☐ Vigilance and scanning
2. ☐ A persistent irrational fear of a specific object, activity or situation which results in a compelling desire to avoid the dreaded object, activity, or situation
3. ☐ Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror, and sense of impending doom occurring on the average of at least once a week
4. ☐ Recurrent obsessions or compulsions which are a source of marked distress
5. ☐ Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress

☒ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder Anxiety dx;rx'd Xanax from TP

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

F. 12.07 Somatoform Disorders

☐ Physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms, as evidenced by at least one of the following:

1. ☐ A history of multiple physical symptoms of several years duration beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly

2. ☐ Persistent nonorganic disturbance of one of the following:

   a. ☐ Vision, or

   b. ☐ Speech,or

   c. ☐ Hearing, or

   d. ☐ Use of a limb, or

   e. ☐ Movement and its control (e.g., coordination disturbances, psychogenic seizures, akinesia, dyskinesia), or

   f. ☐ Sensation (e.g., diminished or heightened)

3. ☐ Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

G. 12.08 Personality Disorders

☐ Inflexible and maladaptive personality traits which cause either significant impairment in social or occupational functioning or subjective distress, as evidenced by at least one of the following:

1. ☐ Seclusiveness or autistic thinking
2. ☐ Pathologically inappropriate suspiciousness or hostility
3. ☐ Oddities of thought, perception, speech and behavior
4. ☐ Persistent disturbances of mood or affect
5. ☐ Pathological dependence, passivity, or aggressivity
6. ☐ Intense and unstable interpersonal relationships and impulsive and damaging behavior

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

H. 12.09 Substance Addiction Disorders

☐ Behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.

If present, evaluate under one or more of the most closely applicable listings:

1. ☐ Listing 12.02-Organic mental disorders*
2. ☐ Listing 12.04-Affective disorders*
3. ☐ Listing 12.06-Anxiety-related disorders*
4. ☐ Listing 12.08-Personality disorders*
5. ☐ Listing 11.14-Peripheral neuropathies*
6. ☐ Listing 5.05-Liver damage*
7. ☐ Listing 5.04-Gastritis*
8. ☐ Listing 5.08-Pancreatitis*
9. ☐ Listing 11.02 or 11.03-Seizures*

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

*NOTE: Items 1,2,3,4,5,6,7,8, and 9 correspond to listings 12.09A, 12.09B, 12.09C, 12.09D, 12.09E, 12.09F, 12.09G, 12.09H, and 12.09I, respectively. If items 1, 2, 3, or 4 are checked, only the numbered items in subsections IIA, IIC, IIE, or IIG of the form need be checked. The first block under the disorder heading in those subsections should not be checked, unless the evidence substantiates the presence of the disorder separate from the substance addiction disorder.

I. 12.10 Autistic Disorder and Other Pervasive Developmental Disorders

☐ Qualitative deficits in the development of reciprocal social interaction, in the development of verbal and nonverbal communication skills, and in imaginative activity. Often there is a markedly restricted repertoire of activities and interests, which frequently are stereotyped and repetitive.

1. ☐ Autistic disorder, with medically documented findings of all of the following:
   - a. ☐ Qualitative deficits in reciprocal social interaction
   - b. ☐ Qualitative deficits in verbal and nonverbal communication and in imaginative activity
   - c. ☐ Markedly restricted repertoire of activities and interests
2. ☐ Other pervasive developmental disorders, with medically documented findings of both of the following:
   - a. ☐ Qualitative deficits in reciprocal social interaction
   - b. ☐ Qualitative deficits in verbal and nonverbal communication and in imaginative activity

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

III. **RATING OF FUNCTIONAL LIMITATIONS**

A. "B" Criteria of the Listings

Indicate to what degree the following functional limitations (which are found in paragraph B of listings 12.02-12.04, 12.06-12.08 and 12.10 and paragraph D of 12.05) exist as a result of the individual's mental disorder(s).

NOTE: Item 4 below is more than a measure of frequency and duration. See 12.00C4 and also read carefully the instructions for this section.

Specify the listing(s) (i.e., 12.02 through 12.10) under which the items below are being rated 12.04, 12.06

FUNCTIONAL LIMITATION	DEGREE OF LIMITATION					
	None	Mild	Moderate	Marked*	Extreme*	Insufficient Evidence
1. Restriction of Activities of Daily Living	☐	☒	☐	☐	☐	☐
	None	Mild	Moderate	Marked*	Extreme*	Insufficient Evidence
2. Difficulties in Maintaining Social Functioning	☒	☐	☐	☐	☐	☐
	None	Mild	Moderate	Marked*	Extreme*	Insufficient Evidence
3. Difficulties in Maintaining Concentration, Persistence, or Pace	☐	☒	☐	☐	☐	☐
	None		One or Two	Three*	Four* or More	Insufficient Evidence
4. Episodes of Decompensation, Each of Extended Duration	☒		☐	☐	☐	☐

*Degree of limitation that satisfies the functional criterion.

B. "C" Criteria of the Listings

1. Complete this section if 12.02 (Organic Mental), 12.03 (Schizophrenic, etc.), or 12.04 (Affective) applies and the requirements in paragraph B of the appropriate listing are not satisfied.

NOTE: Item 1 below is more than a measure of frequency and duration. See 12.00C4 and also read carefully the instructions for this section.

☐ Medically documented history of a chronic organic mental (12.02), schizophrenic, etc. (12.03), or affective (12.04) disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do any basic work activity, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. ☐ Repeated episodes of decompensation, each of extended duration

2. ☐ A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate

3. ☐ Current history of 1 or more years' inability to function outside a highly supportive living arrangement with an indication of continued need for such an arrangement.

☒ Evidence does not establish the presence of the "C" criteria

☐ Insufficient evidence to establish the presence of the "C" criteria (explain in Part IV, Consultant's Notes).

2. Complete this section if 12.06 (Anxiety-Related) applies and the requirements in paragraph B of listing 12.06 are not satisfied.

☐ Complete inability to function independently outside the area of one's home

☒ Evidence does not establish the presence of the "C" criterion

☐ Insufficient evidence to establish the presence of the "C" criterion (explain in Part IV, Consultant's Notes).

IV. CONSULTANT'S NOTES

35 yo female w/ 14 yrs of education alleges depression. H/o skilled work as a [redacted] Reportedly rx'd Xanax from TP, no professional MH tx.

ICC: Has feelings of depression because can't work anymore or do what she used to because of her physical condition. Xanax helps w/ sx, not seeking professional MH tx.

ADLs: lives w/ family, takes care of kids and husband, problems sleeping b/c of physical allegations, problems w/ personal care due to physical, no reminders for meds, sometimes prepares sandwiches but doesn't cook, doesn't do chores, only go outside when necessary, can go out alone and does drive, can pay bills and manage accounts, like to read, spends time w/ others when they come by, regularly goes to the doctor, no problems getting along w/ others, problems w/ memory/concentration, don't know how long can pay attention, finishes what is started, follows instructions very well, handles stress and changes very well

TX: [redacted] 11/19/07 TP f/u didn't note any MH complaints or meds, but gave dx of depression w/ anxiety. Similar dx made on 10/23/07.
SELMA DOCTORS CLINIC: 7/21/08 note showed clmt rx'd Xanax 1 mg. 7/25/07 f/u noted clmt taking Xanax for nerves.

OVERALL RATING: 02
Clmt alleges depression. ADLs reflect limitations based primarily on physical allegations, with minimal independent mental limitations or complaints noted. Clmt has dx of depression and anxiety from TPs, no professional MH tx. It appears that his/her complaints are overwhelmingly of a physical nature;therefore, there is no need for further MH development. Her mental health hx doesn't appear to significantly affect her current functioning.

Section 223 and section 1633 of the Social Security Act authorize the information requested on this form. The information provided will be used in making a decision on this claim. Completion of this form is mandatory in disability claims involving mental impairments. Failure to complete this form may result in a delay in processing the claim. Information furnished on this form may be disclosed by the Social Security Administration to another person or governmental agency only with respect to Social Security programs and to comply with federal laws requiring the exchange of information between Social Security and another agency.

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about these and other reasons why information about you may be used or given out are available in Social Security offices. If you want to learn more about this, contact any Social Security office.

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U. S.C. § 3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 15 minutes to read the instructions, gather the facts, and answer the questions. **SEND OR BRING THE COMPLETED FORM TO YOUR LOCALSOCIALSECURITY OFFICE. To find the nearest office, call 1-800-772-1213.** *Send only comments on our time estimate above to: SSA, 6401 Security Boulevard, Baltimore, MD 21235-6401.*

SOCIAL SECURITY ADMINISTRATION

Refer To: [redacted]

Office of Disability Adjudication and Review
4344 Carmichael Rd
Suite 200
Montgomery, AL 36106-3730

Date: April 23, 2010

[redacted]

Notice of Decision Fully Favorable

I carefully reviewed the facts of your case and made a fully favorable decision on your application(s) for a period of disability, disability insurance benefits, and Supplemental Security Income filed on October 22, 2008 and October 22, 2008. I stated the basis for my decision at your hearing held on April 9, 2010. I adopt the findings of fact and reasons that I gave at the hearing. Please read this notice of decision.

I found you disabled as of January 23, 2007 because of partial complex seizure disorder; sleep apnea disorder; lumbar disc disease; bursitis, right shoulder; headaches; depression; asthma; and morbid obesity so severe that you cannot perform your past relevant work or other work existing in significant numbers in the national economy.

It is my recommendation that a medical reexamination be completed in 24 months to determine if you still meet the requirements for disability.

If you would like more information about my decision, I can provide you with a record of my oral decision. You must ask for this record in writing. You may mail or bring your request to any Social Security or hearing office. Please put the Social Security number shown above on your request.

Another office will process my decision and decide if you meet the non-disability requirements for Supplemental Security Income payments. That office may ask you for more information. If you do not hear anything within 60 days of the date of this notice, please contact your local office. The contact information for your local office is at the end of this notice.

If You Disagree With My Decision

If you disagree with my decision, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you or your representative must ask in writing that the Appeals Council review my decision. You may use our Request for Review form (HA-520) or write a letter. The form is

See Next Page

Permanent Subcommittee on Investigations
EXHIBIT #3a

available at www.socialsecurity.gov. Please put the Social Security number shown above on any appeal you file. If you need help, you may file in person at any Social Security or hearing office.

Please send your request to:

Appeals Council
Office of Disability Adjudication and Review
5107 Leesburg Pike
Falls Church, VA 22041-3255

Time Limit To File An Appeal

You must file your written appeal **within 60 days** of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did not get it within the 5-day period.

The Appeals Council will dismiss a late request unless you show you had a good reason for not filing it on time.

What Else You May Send Us

You or your representative may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence **with your appeal**. Sending your written statement and any new evidence with your appeal may help us review your case sooner.

How An Appeal Works

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

The Appeals Council may:

- Deny your appeal,
- Return your case to me or another administrative law judge for a new decision,
- Issue its own decision, or
- Dismiss your case.

The Appeals Council will send you a notice telling you what it decides to do. If the Appeals Council denies your appeal, my decision will become the final decision.

The Appeals Council May Review My Decision On Its Own

The Appeals Council may review my decision even if you do not appeal. If the Appeals Council reviews your case on its own, it will send you a notice within 60 days of the date of this notice.

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When There Is No Appeals Council Review

If you do not appeal and the Appeals Council does not review my decision on its own, my decision will become final. A final decision can be changed only under special circumstances. You will not have the right to Federal court review.

If You Have Any Questions

We invite you to visit our website located at www.socialsecurity.gov to find answers to general questions about social security. You may also call (800) 772-1213 with questions. If you are deaf or hard of hearing, please use our TTY number (800) 325-0778.

If you have any other questions, please call, write, or visit any Social Security office. Please have this notice and decision with you. The telephone number of the local office that serves your area is (334)875-0587. Its address is:

Social Security
120 Executive Park Ln
Selma, AL 36701-7734

/s/ Tracy S. Guice
Tracy S. Guice
Administrative Law Judge

April 23, 2010
Date

Enclosures:
Form HA-L15 (Fee Agreement Approval)

cc: [redacted]

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF	CLAIM FOR
[redacted] (Claimant)	Period of Disability, Disability Insurance Benefits, and Supplemental Security Income
(Wage Earner)	[redacted] (Social Security Number)

I approve the fee agreement between the claimant and her representative subject to the condition that the claim results in past-due benefits. My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise excepted. I neither approve nor disapprove any other aspect of the agreement.

YOU MAY REQUEST A REVIEW OF THIS ORDER AS INDICATED BELOW

Fee Agreement Approval: You may ask us to review the approval of the fee agreement. If so, write us within 15 days from the day you get this order. Tell us that you disagree with the approval of the agreement and give your reasons. Your representative also has 15 days to write us if he or she does not agree with the approval of the fee agreement. Send your request to this address:

Ollie Garmon
Regional Chief Administrative Law Judge
SSA ODAR R O
Suite 20t10
61 Forsyth Street S W
Atlanta, GA 30303

Fee Agreement Amount: You may also ask for a review of the amount of the fee due to the representative under this approved fee agreement. If so, please write directly to me as the deciding Administrative Law Judge within 15 days of the day you are notified of the amount of the fee due to the representative. Your representative also has 15 days to write me if he/she does not agree with the fee amount under the approved agreement.

See Next Page

[redacted]

You should include the social security number(s) shown on this order on any papers that you send us.

/s/ Tracy S. Guice
Tracy S. Guice
Administrative Law Judge

April 23, 2010
Date

cc: [redacted]

[redacted]

PATIENT: [redacted]
DATE: 02/06/2007

SUBJECTIVE: Patient who is post-excision of infected hernia mesh per [redacted] Having some lower abdominal pain, urinary symptoms, occasional some nosebleed. Hx of HTN. Does a lot of lifting at work.

OBJECTIVE: VS: Stable. HEENT: TMs normal. Nares normal. Pharynx normal. Lungs are clear. CV normal. Abdomen benign. Extremities normal. Neuro stable.

ASSESSMENT:
1. UTI
2. Status post abdominal hernia.
3. Allergic rhinitis.

PLAN: Accuhist LA nightly, continue Zestoretic 20/12.5. Add Macrodantin with meals. Increase fluids, complete Bactrim. F/U in a month or prn.

W

Permanent Subcommittee on Investigations
EXHIBIT #3b

[redacted]

EXHIBIT NO. 2F
PAGE: 61 OF 92

DISCHARGE SUMMARY

Patient: [redacted]
Attending: [redacted]
Admission Date: 01/23/07
[redacted] F Age: [redacted]

[redacted]
ROOM #: R.213-1
HSC:MEDICAL-SURGICAL INP RACE: B

[redacted]

DISCHARGE SUMMARY

Patient: [redacted] MR #: [redacted]
Attending: [redacted] Pt Account # [redacted]
Admission Date: 01/23/2007 Room #: R.213
DOB [redacted] Sex: F Age: 39Y HSC: MED RACE: B
cc: [redacted]

DATE OF DICTATION: 01/28/2007 10:11:30

DATE OF DISCHARGE: 01/28/2007

HOSPITAL COURSE: This 39-year-old female came to us with severe epigastric pain and tenderness. She underwent incisional hernia repair with mesh. She had aches, pain, chills, and fever and not getting any better. She underwent laparotomy. We removed the mesh which was infected with MRSA and marked fibrosis. The fibrous tissue was débrided, and the mesh removed. She received IV Vancomycin during the hospital course. She was afebrile upon release. She was sent home on Septra an additional 10 days. She had significant improvement in her preoperative pain status. The wound was clean and dry and staples were still in. She is to follow up in the office within 5 days. She is released home on iron tablets and Percocet for pain p.r.n. 7.5 mg, 15 tablets.

FINAL DIAGNOSIS: Infected incisional hernia with mesh of MRSA

DICTATING PHYSICIAN: [redacted]

PATIENT FULL NAME [redacted]

[redacted]

Permanent Subcommittee on Investigations
EXHIBIT #3c

[redacted]

PATIENT: [redacted]

DATE: 07/22/2009

SUBJECTIVE: History of hypertension, asthma, sleep apnea disorder, seizure disorder. She was involved in MVA a couple of weeks ago secondary to seizure. Been on Dilantin 100 b.i.d., having shoulder, neck, low back pain. She has not worked in 2 years.

OBJECTIVE: Vital signs - Stable. Lungs are clear. CV normal. Abdomen benign. Extremities - stable. L Spine tenderness L5-S1. Right shoulder tenderness AC joint.

ASSESSMENT:
1. Hypertension.
2. Asthma.
3. Sleep apnea.
4. Obesity.
5. Status post MVA with shoulder pain.
6. Seizure disorder exacerbation.
7. Bursitis, right shoulder.

PLAN: D/C the Percocet. Increase Neurontin 300 mg b.i.d., Hydrochlorothiazide 25 mg daily. Follow up in 6 weeks. She is going to apply for disability.

Permanent Subcommittee on Investigations
EXHIBIT #3d

[redacted]

PATIEN[redacted]
DATE: 01/19/2007

SUBJECTIVE: A 30yoyl complaining of pain and swelling abdominal area. Hx of ventral hernia in the past.

OBJECTIVE: VS: Weight 215, down 15 pounds. Lungs are clear. CV normal. Abdomen abdominal mass. Extremities normal. Neuro stable.

ASSESSMENT:
1. Recurrent ventral hernia.

PLAN: CT abdomen, pelvis. Referral to C. Lett for management. Percocet for pain management. F/U in a week.

Permanent Subcommittee on Investigations
EXHIBIT #3e

EXHIBIT NO. 6F
PAGE: 3 OF 18

[redacted]

Patient Name: [redacted] Date: 3/6/09
Weight: 288.4 Height: _____ B/P: 113/81 PR: 79 RR: ____
Age: 41 DOB: [redacted] Allergies: NKDA
Medications: Proventil Inhaler - Florent - Hydrochorathiazide

Referring Source: ____

V. A.: No Correction Left eye _____ Right eye _____ With Correction Left eye _____ Right eye _____

Progress Note

03/06/09 [redacted]
Patient is here for a follow-up. Patient is using her CPAP machine every night. She reports that she is feeling more alert and awake. She is still having the headaches, however. She is diagnosed with migraine headaches. She has gained 2 lbs. since her last visit and now she is at 288 lbs.
Physical Examination: Motor power and coordination are normal. Patient is morbidly obese.

Assessment:

1. Obstructive sleep apnea syndrome.
2. Migraine headaches.

Plan:

1. I will keep her on the CPAP machine as is. She is on a pressure of 7cm.
2. I will start her on Topamax 50mg qhs to be increased in one week to 50mg bid. Hopefully the Topamax will help the headaches and that will also help her to lose weight.
3. Follow-up with me in one month for re-evaluation.

WWF

Permanent Subcommittee on Investigations
EXHIBIT #3f

[redacted]

[redacted]

SLEEP EVALUATION

Name: [redacted]
Date: 08/19/08
Referring Source: [illegible]
Source of history: Patient
Reliability: Good

Chief Complaint: Snoring and cessation of breathing of about 10-15 years duration.

History of Present Illness: This is a 46-year-old lady who has been experiencing snoring and cessation of breathing during her sleep over the past 10-15 years. Her snoring is loud and is throughout the night. Her snoring is interrupted by episodes of cessation of breathing. Patient sometimes notices that she chokes for air. She goes to bed between 9:00 and 10:00 p.m. and gets up between 5:30 and 6:00 a.m. Upon awakening she does not feel refreshed at all. In the morning she almost always experiences headaches that are described to be in the temples and pressure in nature. During the daytime she is sleepy and tired. She has a high chance of dozing off while sitting and reading, watching T.V., as a passenger in a car for an hour without a break, and when lying down to rest in the afternoon when circumstances permit. She has a moderate chance of dozing off sitting inactively in a public place, sitting and talking to someone, and sitting quietly after lunch without alcohol. She has a mild chance of dozing off while in a car stopped for a few minutes in traffic. Patient reports that she had a motor-vehicle accident 3-4 weeks ago because she fell asleep. She veered off the road and hit a tree. Patient also has noticed over the past few years to be more irritable than her usual self. She seems to be more forgetful and at times disoriented when she wakes up. Her weight has progressively increased. In the past two years alone she has added 30-100 lbs. She was 140 lbs. in high school and now she is 279.8 lbs. There is no history of cataplexy, narcolepsy, sleep paralysis, or hypnagogic hallucinations. There is also no history of oral or nasal surgeries.

Review of Systems: No symptoms attributed to CV, GI, GU, pulmonary, hematological, or psychiatric systems.

Previous Medical History: There is a history of hypertension that is relatively well controlled.

Medications: Proventil Inhaler; Flovent; and Hyzaar.

Allergy: NKDA.

Social History: Does not smoke, drink, or abuse drugs.

Permanent Subcommittee on Investigations
EXHIBIT #3g

[redacted]

Name: [redacted]

Date: 08/19/08
Page 2 of 3

Family History: Non-contributory.

Physical Examination:
Vital Signs: Weight 279.8 lbs. Height 5'2 ½". BP 128/80. PR 84/min, RR 20/min.
General Appearance: In no acute distress. Patient is morbidly obese.
H.E.ENT: No nasal polyps, no conjunctivitis. Mallampati is grade IV.
Neck: No bruits, supple. Neck circumference is 15.5in.
Lungs: Clear and resonant. No wheezing or rhonchi.
Heart: Normal S1, S2, no murmurs, gallops, or heave.
Abdomen: Soft with no tenderness or hepatosplenomegaly. Bowel sounds are heard.
Lymphatics: No lymph nodes.
Extremities: No deformities, edema, clubbing, or cyanosis.

Neurologic Examination:
Mental Status: Patient is awake, alert, and oriented x3. Language and speech are normal.
Cranial Nerve exam:
I: NT.
II: Fundi are normal, visual fields are full in all quadrants.
III, IV and VI: Extraocular movements are normal in all directions with no nystagmus.
V: Facial sensation is normal in all divisions (V1, V2 and V3).
VII: No facial weakness or asymmetry.
VIII: Normal to finger rub.
IX and X: Normal swallowing and gag.
XI: 5/5 Trapezius and Sternocleidomastoid.
XII: Tongue is in midline and shows no weakness, atrophy or fasciculation.
Motor Power: 5/5 throughout.
DTRs: 2/5 throughout. Toes are downgoing.
Sensory exam: Unremarkable to pinprick, light touch, vibration, and position sense.
Coordination: Unremarkable finger to nose and heel to shins exams bilaterally.
Gait: Unremarkable.

Assessment and diagnoses:
1. Obstructive sleep apnea syndrome. This is supported by the patient's history of snoring, cessation of breathing, and daytime sleepiness.
2. Hypertension.

[redacted]

Name: [redacted]

Date: 08/19/08
Page 3 of 3

Plan:

1. I discussed with the patient the above. I discussed with her sleep apnea and how that will increase her risk of developing hypertension, heart disease and strokes.
2. I asked her not to drive if she feels sleepy at all. She needs to be very cautious in driving, especially at this last accident she had.
3. She was advised to lose weight.
4. The polysomnogram was discussed and patient was agreeable to have one.
5. If the polysomnogram shows evidence of sleep apnea, then patient will be brought back for a CPAP titration study.
6. I will see her after the sleep studies are performed.

D.
Diplomate, American Board of Psychiatry and Neurology
Diplomate, American Board of Sleep Medicine

WWF/tba

[redacted]

PATIENT [redacted]
DATE: 10/08/2007

SUBJECTIVE: History of HTN, previously been on Zestoretic 20/12.5 but this has been causing dizziness.

OBJECTIVE: VS: Stable. Lungs are clear. CV normal. Abdomen benign. Extremities - stable. Neuro stable.

ASSESSMENT:
1. Anemia.
2. HTN.

PLAN: D/C the Zestoretic. Low dose HCTZ 1/2 tablet daily. Concerned about weight gain, encourage exercises. F/U in a month or prn.

Permanent Subcommittee on Investigations
EXHIBIT #3h

[redacted]

PATIENT [redacted]

DATE: 10/22/2008

SUBJECTIVE: History of sleep apnea syndrome. Having some low back pain radiating to the right leg. Interested in obesity surgery. Feeling depressed.

OBEJCTIVE: Morbidly obese female. No acute distress. Vital signs stable. Pharynx normal. Lungs are clear. Cardiovascular normal. Extremities stable.

ASSESSMENT:

1. Low back pain.
2. Radiculopathy.
3. History of asthma.
4. Sleep apnea disorder.

PLAN: Pepcid 20 daily, Ventolin 2 puffs q6 hours. X-ray lumbar spine. Put on 1200 calorie diet. F/U in a month.

6

Permanent Subcommittee on Investigations
EXHIBIT #3i

[redacted]

PATIENT: [redacted]

DATE: 12/23/2008

SUBJECTIVE: History of persistent low back pain. No response to the Naprosyn. On Percocet.

OBJECTIVE: Vital signs stable. Lungs are clear. Cardiovascular is normal. Extremities - stable. Neuro intact.

ASSESSMENT:

1. Lumbar disk syndrome.

PLAN: MRI lumbar spine. Percocet b.i.d. Obesity counseling as well. She is morbidly obese. No improvement. Follow up in a month. Exercise as tolerated. Refer to L [illegible] in March.

Permanent Subcommittee on Investigations
EXHIBIT #3j

[redacted]

[redacted]

PATIE[redacted]

DATE: 01/26/2009

SUBJECTIVE: History of osteoarthritis, pan and stiffness. History of CPAP disorder, using CPAP machine. Been on Percocet for pain. On Paxil for depression. She desires obesity surgery. She has not lost any weight since starting.

OBJECTIVE: VITAL SIGNS: Stable. Weight 289. Blood pressure 130/80. LUNGS: Clear. CV: Normal. ABDOMEN: Benign. EXTREMITIES: Stable.

ASSESSMENT:

1. Morbid obesity.
2. Hypertension.
3. Sleep apnea disorder.

PLAN: Neurontin 100 b.i.d., continue hydrochlorothiazide daily. CPAP as directed. Follow up here in a month's time. Referral to obesity clinic.

Permanent Subcommittee on Investigations
EXHIBIT #3k

EXHIBIT NO. 13E
PAGE: 1 OF 3

ALABAMA DISABILITY DETERMINATION SERVICE
VOCATIONAL RATIONALE FORM

CLAIMANT NAME: [redacted]
Date of Birth: [redacted]
DISABILITY SPECIALIST: [redacted]

[redacted]
CLAIM [redacted]

I. GENERAL CLAIM INFORMATION

A. RATIONALE IS FOR:
- [x] 1. Current Evaluation
- [ ] 2. Date Last Insured _____
- [ ] 3. Projected After 12 Months _____
- [ ] 4. Other:

B. AGE:
- [x] 1. Younger Individual (Up to 49)
- [ ] 2. Approaching Advanced Age (50-54)
- [ ] 3. Advanced Age (55-59)
- [ ] 4. Approaching Retirement Age (60-64)

C. EDUCATION:
- [ ] 1. Illiterate/No English
- [ ] 2. Marginal (6 years or less)
- [ ] 3. Limited (7-11 years)
- [x] 4. High School (12 years or more)

II. PAST RELEVANT WORK

[ ] A. The claimant has no past relevant work experience.
- [ ] 1. The claimant has a severe impairment, is of advanced age or older and has a limited education. This fits the special adverse vocational profile. (POMS DI 25010.001 B.2.)

[ ] B. The limitations outlined in RFC/MRFC dated _____ are consistent with the physical/mental requirements of the claimant's past relevant work as a:
- [ ] 1. as the job was actually performed AND/OR
- [ ] 2. as the job is usually performed in the national economy
  DOT #

[x] C. 1. The claimant's past relevant work as actually performed would be ruled out due to limitations outlined in RFC/MRFC dated 01/13/2009

	JOB TITLE	RFC LIMITATIONS THAT RULE OUT JOB
A.	[redacted]	Stand and walk about 4, Lift/carry 20/10, unskilled work
B.	[redacted] x3	Stand and walk about 4, Lift/carry 20/10, unskilled work
C.	[redacted]	Stand and walk about 4, Lift carry 20/10, unskilled work
D.		
E.		
F.		
G.		

2. The claimant's past relevant work as usually performed in the national economy would be ruled out due to limitations outlined in the RFC/MRFC dated _____

	DOT #	RFC LIMITATIONS THAT RULE OUT JOB
A.	299.167-010	See above. Unskilled work
B.	355.674-014 x3	See above. Unskilled work
C.	355.674-014	See above. Unskilled work
D.		
E.		
F.		
G.		

Permanent Subcommittee on Investigations
EXHIBIT #31

CLAIMANT NAME: [redacted]
DISABILITY SPECIALIST: [redacted]

A/N[redacted] EXHIBIT NO. 13E
CLAIM[redacted] PAGE: 2 OF 3

☐ D. The claimant's past relevant work as a is a combination of two or more different jobs. As such, the job is determined to have no direct correlation to one occupational title in the national economy (D.O.T.). The claimant's description regarding the physical/mental demands of this job are therefore accepted as given. (ITEM II.C.1 must be completed.)

☐ E. Reasonable attempts to document all of the claimant's past relevant work have been unsuccessful. Review of the vocational information already in file supports the claimant's ability to perform other work, step 5. (Reference: Prototype Operating Instructions, Section III. C. 9.)

Additional Rationale Comments:

III. OTHER WORK

A. RFC/MRFC Assessment(s): Maximum Work Capacity Date(s): 12/3/08 1/13/09

- ☐ 1. No Exertional Limitations
- ☐ 2. Heavy Work Range
- ☐ 3. Medium Work Range
- ☐ 4. Light Work Range
- ☐ 5. Limited Light Work Range
- ☒ 6. Sedentary Work Range
- ☐ 7. Less Than A Full Sedentary Work Range
- ☐ 8. Skilled Level Work
- ☐ 9. Semi-Skilled Level Work
- ☒ 10. Unskilled Level Work
- ☐ 11. Unskilled Work Requirements Not Met

☐ B. The restrictions as outlined on ☐ RFC or ☐ MRFC dated _____ would preclude the claimant from performing the basic requirements of ☐ sedentary OR ☐ unskilled work due to:

☐ C. The claimant has acquired skills from past relevant work, but the issue of transferability of those skills to other jobs is immaterial. Job citation of occupations the claimant could perform is located in III.E.

☐ D. The claimant has acquired skills from relevant past work that are transferable to other jobs. Please refer to the vocational analysis in file.

☒ E. The claimant has not acquired transferable skills. The overall vocational profile remains favorable for work adjustment to other jobs. Examples of jobs this claimant can perform include:

JOB TITLE/DOT#	STRENGTH/SKILL LEVEL
1. Hander in 683.687-018	Unskilled/sedentary
2. Lens Inserter 713.687-026	Unskilled/sedentary
3. Cuff Folcer 685.687-014	Unskilled/Sedentary

Affirmative evidence of job existence is confirmed by the appropriate reference material which documents a significant number of individuals are employed in the primary industries wherein these jobs are found.

CLAIMANT NAME: [redacted]
DISABILITY SPECIALIST: [redacted]

A/N [redacted] EXHIBIT NO. 13E
CLAIM [redacted] PAGE: 3 OF 3

☐ F. The claimant has a severe upper extremity impairment that causes a ☐ partial OR ☐ major loss of the use of the ☐ left OR ☐ right upper extremity. Given the claimant's age of and the absence of any transferable skills, such restrictions as indicated by the RFC dated _____ would not preclude the claimant from adjusting to other unskilled types of work involving elementar handling functions, non-complex clerical or customer service and simple machine tending work. These job functions include such activities as welding, assembling, inspecting and sanding/finishing. These jobs are found throughout the national economy in numerous work settings.

☐ G. This claimant's age is within a few days/weeks of a higher age category and using that higher age category would result in a favorable determination. The following factor(s) will justify use of a higher age category:

- ☐ 1. English literacy is minimal.
- ☐ 2. The ability to communicate in English is marginal.
- ☐ 3. The requirements for meeting an educational level are marginal.
- ☐ 4. There are multiple years of unskilled work in an isolated industry.
- ☐ 5. There are impairments, in addition to primary impairment(s), that were considered in the RFC assessment but did not significantly impact on the occupational base of the exertional level established by the RFC assessment.

☐ H. The claimant ☐ HAS ☐ HAS NOT acquired skills from past work activity. The overall vocational profile is not favorable for work adjustment to other jobs because:

☒ I. Vocational Rule Number: 201.28

- ☐ 1. Rule is met and directs a decision of ☐ Disabled OR ☐ Not Disabled
- ☒ 2. Rule provides the framework for a decisiou of ☐ Disabled OR ☒ Not Disabled

Additional Rationale Comments:

SIGNATURE:	Date
[redacted]	01/13/2009

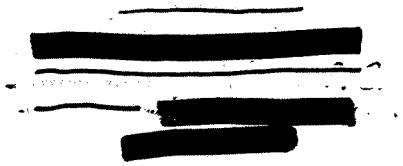


EXHIBIT NO. 10F
PAGE: 4 OF 14

April 6, 2010

Faith Disability Advocacy Program
2533 Broad Street
Selma, Alabama 36701

PHYSICAL CAPACITY EVALUATION

RE:
DOB:
SSN:

Dear Sir/Madam:

At your request, I did a disability physical capacity evaluation for in my office on April 6, 2010. She is a 42-year-old young lady with history of partial complex seizure disorder, major depression, sleep apnea disorder, lumbar disk syndrome and chronic bursitis, right shoulder. Also, history of migraine headaches. The patient has not worked since 2007. She spent 10 years working at being . Part-time she was a home health aide from 1987 to 1998. Around 2003-2004 she started having problems with hernias, initial surgery done by In 2006, surgery for hernia repair. This was done by . In 2007, she had a third procedure done by because the hernia had become infected and had to be taken down. The patient has history of lumbar disk disease since about 2008.

CURRENT MEDICATIONS: Include hydrochlorothiazide for blood pressure. She is on Prestige 50 mg daily for depression. She is on Ventolin 2 puffs q.6 hours and Advair 100/50, one puff b.i.d. for asthma. She is on Topamax 50 mg b.i.d. for partial complex seizure disorder. She has CPAP equipment, setting of 8 nightly. For her lumbar disk disorder, she is on Percocet 5 mg b.i.d., Flexeril 10 mg b.i.d. She is on Midrin p.r.n. for migraine headaches.

Unfortunately, this pleasant young lady is 100% disabled. Please do refer to the physical capacity evaluation form.

If I can be of further assistance to you, please do not hesitate to contact me.

Permanent Subcommittee on Investigations
EXHIBIT #3m

Thank you,

[redacted]

EXHIBIT NO. 10F
PAGE: 7 OF 14

Faith Disability Advocacy Program
2533 N. Broad St
Selma, Al 36701

Date: 4/7/10

Doctor:

Doctors Medical Source Overall Opinion for Disability:

[illegible]

Physical Capacity Overall Opinion for Disability:

[illegible]

Doctors Signature: [illegible]

PHYSICAL CAPACITIES EVALUATION FORM (PCE)

CLAIMANT [redacted] **SSN** [redacted]

Please complete the following items based on your clinical evaluation of the claimant and other results. Any item that you do not believe you can answer should be marked N/A (not answerable).

In terms of an eight (8) hour workday, "Occasionally" = 1%-33%; "Frequently" = 34%-66%; and "Continuously" = 67%-100%.

I. Claimant can lift:

	Never	Occasionally	Frequently	Continuously
A.) Up to 5 lbs	( )	(✓)	( )	( )
B.) 6-10 lbs	(✓)	( )	( )	( )
C.) 11-20 lbs	(✓)	( )	( )	( )
D.) 21-25 lbs	(✓)	( )	( )	( )
E.) 26-50 lbs	(✓)	( )	( )	( )
F.) 51-100 lbs	(✓)	( )	( )	( )
G.) 101-150 lbs	(✓)	( )	( )	( )

II. Claimant can carry:

	Never	Occasionally	Frequently	Continuously
A.) Up to 5 lbs	( )	(✓)	( )	( )
B.) 6-10 lbs	(✓)	( )	( )	( )
C.) 11-20 lbs	(✓)	( )	( )	( )
D.) 21-25 lbs	(✓)	( )	( )	( )
E.) 26-50 lbs	(✓)	( )	( )	( )
F.) 51-100 lbs	(✓)	( )	( )	( )
G.) 101-150 lbs	(✓)	( )	( )	( )

III. Claimant can use hands for:

	Never	Occasionally	Frequently	Continuously
A.) Simple grasping				
Right	( )	(✓)	( )	( )
Left	( )	(✓)	( )	( )
B.) Pushing & pulling of arm controls				
Right	(✓)	( )	( )	( )
Left	(✓)	( )	( )	( )
C.) Fine manipulation				
Right	( )	(✓)	( )	( )
Left	( )	(✓)	( )	( )

CLAIMANT [redacted] SSN [redacted]

IV. Claimant can use feet for:

	Never	Occasionally	Frequently	Continuously
A.) Pushing & pulling of leg controls				
Right	( )	( )	( )	( )
Left	( )	( )	( )	( )

V. Claimant is able to:

	Never	Occasionally	Frequently	Continuously
A.) Stoop	( )	( )	( )	( )
B.) Crouch	( )	( )	( )	( )
C.) Kneel	( )	( )	( )	( )
D.) Crawl	( )	( )	( )	( )
E.) Climb	( )	( )	( )	( )
F.) Balance	( )	( )	( )	( )
G.) Reaching (overhead)	( )	( )	( )	( )

VI. Claimant is able to work at activities involving:

	Never	Occasionally	Frequently	Continuously
A.) Unprotected heights	( )	( )	( )	( )
B.) Being around machinery	( )	( )	( )	( )
C.) Exposure to marked changes in temperature and humidity	( )	( )	( )	( )

VII. Claimant is able to stand and/or walk: (with normal breaks)

___ never
___ less than 2 hours in an 8-hour workday
___ at least 2 hours in an 8-hour workday
___ about 6 hours in an 8-hour workday
___ medically required hand-held assistive device is necessary for ambulation

CLAIMANT [redacted] **SSN** [redacted]

VIII. Claimant is able to sit: (with normal breaks)

___ never
___ less than about 6 hours in an 8-hour workday
___ about 6 hours in an 8-hour workday
✓ must **periodically alternate sitting and standing** to relieve pain or discomfort

VIII. Claimant can:

	LIMITED	UNLIMITED
See		✓
Hear		✓
Speak		✓
Temperature Extremes	✓	
Noise	✓	
Dust	✓	
Vibration	✓	
Humidity/Wetness	✓	
Fumes, odors, chemicals, gases	✓	

Physician's Signature _____

Date 4-6-10

 [redacted] [redacted]

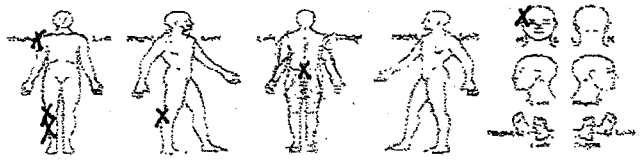
EXHIBIT NO. 10F
PAGE: 11 OF 14

INITIAL PAIN ASSESSMENT TOOL (ADULT)

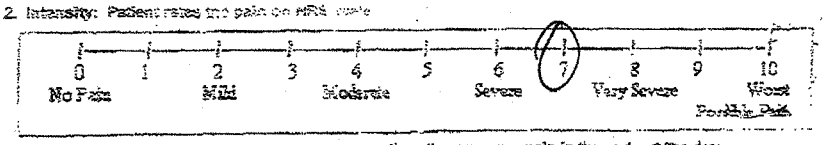
Patient's name: [redacted] DOB: [redacted] HSI #: _____ Date: 4-7-10

Doctor: Bell, L Shakdeyer, Headaches, seizures Allergies: Lortab Nurse: _____

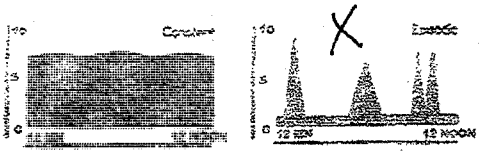
1. Location: Patient or nurse marks drawing



2. Intensity: Patient rates the pain on NRS scale



3. Pain Patterns: Indicate which picture best describes the way your pain is throughout the day



4. Effects of pain:

Working	Not At All	A Little	A Lot
Relationships	Not At All	A Little	A Lot
Mood	Not At All	A Little	A Lot
Sleeping	Not At All	A Little	A Lot
Walking	Not At All	A Little	A Lot
Enjoying life	Not At All	A Little	A Lot
Taking care of yourself	Not At All	A Little	A Lot
Other	Not At All	A Little	A Lot

[redacted] [redacted]

(The following is a transcript in the hearing held before Tracy S. Guice, Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, on April 9, 2010, at Montgomery, Alabama, in the case of [redacted], Social Security Number [redacted] The Claimant appeared in person and was represented by [redacted]. Also present were [redacted] Medical Expert; [redacted], Vocational Expert.)

(The hearing commenced at 10:32 a.m. on April 9, 2010.)

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

ALJ: -- case of [redacted]

CLMT: [redacted]

ALJ: [redacted]'m sorry, [redacted] Social Security number [redacted] Good morning.

CLMT: [redacted]

ALJ: Is it [redacted]? You're certainly right. Thank you so much for correcting that because that would have been the wrong number to have placed on there. Social Security number [redacted].

CLMT: Right.

ALJ: Thank you, [redacted] My name is Tracy Guice, I'm the Administrative Law Judge with the Office of Disability Adjudication and Review assigned to this case. I note for the record [redacted]l is present along with her representative, [redacted]. Also present is a friend of [redacted]l, [redacted]. We have as our hearing reporter today, [redacted]. Our medical expert is [redacted], and our vocational expert is [redacted] All testimony today is going to be taken by oath or affirmation. What that means is I'm going to swear you in and it's going to be necessary for you to testify truthfully and full.

CLMT: All right.

Permanent Subcommittee on Investigations
EXHIBIT #3n

ALJ: If for some reason you don't understand a question, please ask me to repeat it or explain it to you. Now I will tell you that [illegible] s job as our hearing reporter is to make sure she takes notes about the hearing and also run recording equipment. That's why the mics are in front of you.

CLMT: Yes, ma'am.

ALJ: However, we can't take a notation or make a recording if you're just going to nod your head to respond to questions. So you do need to give me verbal responses and also keep your voice up so that we do get that recording of the hearing. [redacted] would you like to waive a formal reading of the issues?

REP: Yes.

ALJ: Have you and your client looked at the evidence in the record? Do you have any objection to that evidence?

REP: I have an objection to the evidence that they only used the basic information of obesity --

ALJ: You need to, you need to bring the mic just a little bit closer. Now what were you saying, you have an objection --

REP: That they only looked at obesity and the asthma issue based on what I saw in the records --

ALJ: Okay.

REP: -- as their -- to make their decision.

ALJ: And I have the full authority to look at everything, including the most recent evidence that you brought in.

REP: Right, thank you.

ALJ: Okay. I'll note that for the record. Before I read the

evidence into the record, let me tell you that I'm not bound by the prior unfavorable determination made at the initial level. I'm not bound by their decision, but I am bound by Social Security laws and regulations. So when I issue my decision, it's based on all the evidence in the record as well as testimony I take at this hearing. This is a fully electronic file. It consists of 1A through 4A, 1B through 13B, 1D through 5D, 1E through 17E, and 1F through 9F. 10F is a more recent request for an on-the-record disposition, including an evaluation performed by [redacted] indicating that the claimant had significant limitations as previously noted in the record.

(Exhibits 1A through 10F, previously identified, were received into evidence and made a part of the record thereof.)

ALJ: All right, [redacted] I [redacted], also [redacted] in case you say anything, I would like for you to be under oath. So would all of you raise your right hands please.

(The Claimant, [redacted] having been first duly sworn, testified as follows:)

EXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE:

Q All right. [redacted], let's make sure we still have that correct address for you. [redacted]

A Correct.

Q Telephone number still [redacted]

A Correct.

Q All right. You're alleging you became disabled January 23rd of 2007. Have you worked since that date?

A No, ma'am.

Q Are you working now?

A No, ma'am.

Q What's the highest grade in school you completed?

A 12th.

Q Okay. You have some jobs in the past where you did some work as a [redacted], [redacted], and [redacted]. Any other jobs that you would have performed in the past 15 years that I didn't name?

A No. [redacted]

Q [redacted], okay. [redacted], is there anything about her past work I need to ask her before you can testify?

VE: No, ma'am.

ALJ: Okay.

BY ADMINISTRATIVE LAW JUDGE:

Q [redacted] I'm understanding that you have a combination of medical issues, including you've had some issues with headaches, but you more recently had some seizure issues, is that correct?

A That's correct.

Q You've been treated by [redacted], a neurologist, correct?

A That's correct.

Q You've also had some asthma problems.

A Correct.

Q Shortness of breath with exertion, okay?

A Yes, ma'am.

Q You've also had some problems with osteoarthritis in your back.

A And right shoulder.

Q Okay, in your right shoulder you have bursitis, correct?

A Correct.

Q Sleep apnea, you've been diagnosed with sleep apnea?

A Yes.

Q All right. You've also had some depression issues, is that correct?

A Correct.

Q All right. And more importantly you've had some blood pressure issues, hypertension?

A Yes.

Q All right. And how much, how much do you currently weigh?

A 276.

Q And how tall are you?

A Five feet.

Q Okay. I notice today you came to the hearing using a cane. Did someone prescribe that for you?

A I use a cane because my back locks up on me.

Q Okay.

A And when my back locks up on me, I have a hard time getting around. So I mentioned it to my doctor.

Q And did they recommend that you get a cane then?

A Yes.

Q Okay. Did they prescribe it for you?

A He didn't prescribe it, but he told me I could just buy one.

Q And they instructed you to use it?

A Yes.

Q Okay. Let me ask you a couple questions about your functional abilities. Can you lift and carry anything over 10 pounds without a problem?

A No.

Q Are you able to sit, stand or walk for a prolonged period of time?

A No.

Q Does even sitting bother you for a long period of time?

A Yes.

Q What happens?

A When I sit for a long period of time, I start to have pain in my --

Q In your back?

A -- in my lower back. I have to get up, move for a little while, then sit back down, turn in different positions. Put something behind my back.

Q And let me just ask you this. It looked like ——— has actually put you on some seizure medication, is that true?

A That's true.

Q Has that medication helped you?

A A little bit, yes and no because I still have episodes.

Q Do you live alone or with anyone?

A Me and my son live together in --

Q How old is your son?

A He's four. And my daughter --

Q Are you the primary caregiver for him?

A Yes.

Q Do you have to have help taking care of him?

A Yes. My daughter --

Q Who comes over and helps you?

A My daughter, she moved back in.

Q Okay. So does your daughter also help you with your household chores?

A Yes.

Q Do you have a driver's license?

A I do.

Q Do you drive?

A Not now.

Q Why is that?

A Because of the seizures.

Q You had some episodes where you had staring spells, and then you also had an episode where you actually passed out, or blacked out, is that correct?

A Yes.

Q Is that a yes?

A Yes, ma'am.

Q Okay. Anything further you want to tell me that I haven't asked you?

A No, along with that, you know, when I have them I have the -- after I have them, you know, I have the wet pants and stuff like that.

Q You lose control. I did read that in the record. Okay. All right, well thank you. [redacted], I will tell you that based on

what I see as evidence in the record along with what ——— report was in 10F, that I'm going to find that her maximum residual functional capacity is for less than a full range of sedentary. I do however have two experts here and I need to get their testimony on the record before I can read my bench decision checklist into the record, okay? All right, let's go to ——— first.

(The Medical Expert, ——— having been first duly sworn, testified as follows:)

EXAMINATION OF MEDICAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q ——— r, you've been sworn in. Could you state your full name for the record, please.

A ———

Q Does the resume in the record accurately reflect your professional qualifications?

A Yes.

Q Have you had any social or professional contact with the claimant or her friend, [redacted]?

A I have not.

Q [redacted] any objections? I'm going to ask you for both experts, for ——— Do you have any objections to their presence and testimony or professional qualifications?

REP: (INAUDIBLE)

ALJ: Is that a no?

REP: No.

ALJ: Okay.

BY ADMINISTRATIVE LAW JUDGE:

Q D——— you're familiar with Social Security laws,

regulations including the adult listings, is that correct?

A Yes, Your Honor.

Q Have you been present during the claimant's testimony and also reviewed the evidence in the record?

A I have.

Q I want you to do two things for me. Based on your education, experience and training, could you identify for me the claimant's mental impairments and state whether they meet or equal a listing?

A She has a history of chronic major depressive disorder, deemed to be moderate in 2008 with a brief episode of anti-depressant medication prescribed by her family physician. There is no ongoing mental health treatment for that.

Q Does this meet or equal a listing based on your education, experience and training?

A It does not meet or equal the 12.04 listing, Judge.

Q When we look at the B criteria, could you give me those limitations with regard to your education, experience and training and review of the record?

A Well, this would be for that time period because there's nothing current.

Q Correct.

A No impairments maintaining activities of daily living. Moderate impairments maintaining concentration, persistence and pace. Mild to moderate impairments maintaining social functioning with no episodes of decompensation present.

Q All right. Would the claimant, in your opinion, be able to

perform work activity that involved complex instructions, or would she be reduced basically to unskilled type work?

A There is not information in here that indicates that she would not be able to perform complex tasks.

Q But given -- if you also --

A If you take the combination of everything, that would probably be difficult, yes.

Q Okay, all right. Any questions for [redacted]

REP: (INAUDIBLE)

ALJ: Okay. Is that a no? You have to say --

REP: No.

ALJ: -- just a little bit louder so we do get a recording of your testimony.

REP: No.

(The Vocational Expert, [redacted], having been first duly sworn, testified as follows:)

EXAMINATION OF VOCATIONAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q [redacted], you've been sworn in. Could you state your full name for the record please.

A [redacted]

Q Does the resume in the record accurately reflect your professional qualifications?

A Yes, it does.

Q Have you had any social or professional contact with the claimant or her friend, [redacted]

A No, ma'am.

Q Have you reviewed the evidence in the record with regard to

the claimant's work history?

A Yes, I have.

Q Could you identify for me the claimant's past work with regard to the past 15 years, job title, skill and exertional level?

A She's worked as a [redacted]r, which is light and on the lower end semiskilled range. It has an SVP:3. She's also worked as a [redacted] both [redacted]as well as [redacted]The Dictionary of Occupational Titles describes that work as medium, semiskilled. She functioned at the medium, semiskilled range in the [redacted]. And then at the heavy, semiskilled range in the [redacted]

Q All right.

A O[redacted] I'm sorry.

Q I would for you to -- for hypothetical number one to consider an individual of the claimant's age, education and vocational experience. Who is not able to engage in work activity on a regular and consistent basis for eight hours a day, 40 hours a week, or maintain concentration for two-hour periods during an eight-hour workday. First, would such an individual be able to perform any of the claimant's past work? And if not, would there be other jobs in the regional or national economies?

A No to both questions.

Q Any questions for [redacted]

REP: No, not at this time.

ALJ: [redacted] based on the evidence in the record, your testimony and the testimony of the experts, I'm going to issue a fully favorable bench decision. I will read this checklist into the record

and it will become your decision in this case. You will receive a notice in the mail confirming everything that's happened here today. I will, after I read it into the record, provide it to your representative. You may review it, [redacted] and state whether you have any objections thereto. Then you'll need to give it back to me because it will be scanned into the record after this hearing and go in as Exhibit 5A.

This is the case of [redacted] I'm not going to say your first name correctly.

CLMT: [redacted]

ALJ: [redacted] I'm so sorry. [redacted] Social Security number [redacted] day's hearing date is April the 9th of 2010. The claimant filed applications for Title II and Title XVI on October 22nd of 2008. Her alleged onset date is January 23rd of 2007, and her date last insured for Title II purposes only is March 31st of 2012. The claimant has a combination of impairments as noted in the record. Partial/complex seizure disorder, sleep apnea disorder, lumbar disk disease, bursitis of the right shoulder, headaches, depression, asthma, and morbid obesity. As noted, the claimant does not meet or equal one of the listings. Dr ——— testified the claimant would not have restrictions of daily living, but had moderate limitations or restrictions of maintaining social functioning and concentration, persistence and pace. The combination of the claimant's impairments result in a maximum residual functional capacity for less than a full range of unskilled sedentary work. This is based on the combination of her impairments with consideration under Social Security ruling 0201P,

and that's the ruling of obesity. When you have someone who is morbidly obese with a 55.8 body mass index, you look at how the other functioning systems of their body are affected by their size, or their weight.

REP: Right.

ALJ: In this case we have a seizure issue, we have hypertension, we have a lumbar disk issue, we also have asthma. So when you look at all those in combination, it begins to erode the occupational base under 968P and 9P which are Social Security rulings of which you could work. And this was the testimony provided by the vocational expert. He identified your past work as light, medium and heavy, and semiskilled. However he indicated there would be no jobs that you could -- you could not return to your past job or any other jobs given this residual functional capacity I've outlined. I'm also going to recommend a medical re-evaluation in 24 months. I have approved the fee agreement with

[redacted]. I'm going to let you come up here and look at this. It is handwritten and I do apologize for that. I type much better than I write something out. You can review it. Everything that I've read into the record is identified in that checklist. If you have any objections to the checklist, you need to state them now. If not, we're going to have that scanned in. You'll need to give it back to me and I'll scan it into the record after this hearing. It will go in as Exhibit 5A. And we're allowing [redacted] the opportunity to review the bench checklist. Any objections?

REP: No objections, Your Honor.

ALJ: Okay. All right, you'll need to give it back to me if you're concluded. Anything further you or your client would like to add on the record?

CLMT: No.

REP: No, Your Honor.

ALJ: All right. Thank you, [redacted] for being patient with us.

CLMT: Thank you.

ALJ: And coming and providing your testimony. And with nothing further to add, then we'll close the hearing and go off the record.

(The hearing closed at 10:47 a.m. on April 9, 2010.)

C E R T I F I C A T I O N

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded at the hearing held in the case of [redacted] before Administrative Law Judge Tracy S. Guice.

Brenda Nolan

Brenda Nolan, Transcriber
Free State Reporting, Inc.

Caroline Musterman

Caroline Musterman, Proofreader
Free State Reporting, Inc.

Social Security Administration
Supplemental Security Income
Notice of Disapproved Claim

120 EXECUTIVE PARK LN
SELMA AL 36701

Date: September 2, 2008
Claim Number: [redacted]

[redacted]

* Application Filed *
August 13, 2008

* Type of Claim *
Individual--Disabled

You cannot get Supplemental Security Income (SSI) for the reason given below.

Why We Can't Pay You

- We find that you have resources worth more than $2,000.00 for August 2008 on.

  For you to receive SSI payments, the resources that you own cannot be worth more than $2,000.00 for August 2008 on. We call this amount the limit on resources.

  Resources are the things that you own such as cash, stocks, bank accounts, certain types of life insurance, buildings, and land on which you do not live. We do not include as resources the home in which you live, one car used for transportation and some other things.

- We explain on the last page of this letter how we decided that you are not eligible for SSI because of resources that are over the limit.

SSA-L8030

Permanent Subcommittee on Investigations
EXHIBIT #4a

How You May Be Able To Receive SSI

Although your resources would prevent you from receiving payments, you may still be able to receive SSI while you are trying to sell your resources if all of the following are true.

- The value of cash, including savings, and other things you have that can easily be changed into cash is less than $1,911.00.
- You have other things that cannot easily be changed into cash and these things make your resources too high. Examples of such things are a building or land on which you do not live.
- You will sign a written agreement which allows you to receive SSI payments while you are trying to sell the property that causes your resources to be over the limit.
- You agree to repay any SSI payments which you receive while trying to sell the property.

If you think all of these are true about you, and you want to receive SSI payments, please contact the local Social Security office.

Information About Medicaid And Other Benefits

- An agency of your State will advise you about the Medicaid program. If you have any questions about your eligibility for Medicaid or need immediate medical assistance, you should get in touch with the State agency which handles eligibility for medical assistance.
- You may want to contact your local public assistance office to find out if you qualify for payments from them.

You Can Review The Information in Your Case

The decisions in this letter are based on the law. You have a right to review and get copies of the information in our records that we used to make the decisions explained in this letter. You also have a right to review and copy the laws, regulations and policy statements used in deciding your case. To do so, please contact us. Our telephone number and address are shown under the heading "If You Have Any Questions."

Things To Remember

- Because you are not eligible for the reasons given above, we have not determined whether or not you are disabled.
- If at any time in the future you think you qualify for payment, please contact us immediately about filing a new application. The earliest month for which we can pay you is the month after you file a new application.

If You Disagree With The Decision

If you disagree with the decision, you have the right to appeal. We will review your case and consider any new facts you have.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.
- To appeal, you must fill out a form called "Request for Reconsideration." The form number is SSA-561. To get this form, contact one of our offices. We can help you fill out the form.

How To Appeal

There are two ways to appeal. You can pick the one you want. If you meet with u⁴ in per⁴on, it may he⁴p u⁴ ⁴ eci⁴ e your ca⁴e.

- Ca⁴e Re⁴iew. You have a right to review the facts in your file. You can give us more facts to add to your file. Then we'll decide your case again. You won't meet with the person who decides your case. This is the only kind of appeal you can have to appeal a medical decision.

- Informa⁴ Conference. You'll meet with the person who decides your case. You can tell that person why you think you're right. You can give us more facts to help prove you're right. You can bring other people to help explain your case.

Please read the enclosed pamphlet, "Your Right to Question the Decision Made on Your SSI Claim." It contains more information about the appeal.

If You Want Help With Your Appeal

You can have a friend, representative or someone else help you. There are ⁴roup⁴ that can he⁴p you fin⁴ a repre⁴entati⁴e or ⁴i⁴e you free ⁴e⁴a⁴ ⁴er⁴ ice⁴ if you ⁴ua⁴ify. There are also representatives who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it.

[redacted]
09/02/2008

New Application

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with this decision and you file a new application instead of appealing you might lose some benefits, or not qualify for any benefits. So, if you disagree with this decision, you should ask for an appeal within 60 days.

If You Have Any Questions

For general information about SSI, visit our website at www.socialsecurity.gov on the Internet. You will find the law and regulations about SSI eligibility and SSI payment amounts at www.socialsecurity.gov/SSIrules/.

For general questions about SSI or specific questions about your case, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 334-875-0587. Our lines are busiest early in the week and early in the month, so if your business can wait, it's best to call at other times. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

SOCIAL SECURITY
120 EXECUTIVE PARK LN
SELMA AL 36701

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

We are sending you a pamphlet which contains important information you should know. The pamphlet is called "Your Right To Question The Decision Made On Your SSI Claim."

Paul D. Barnes

Paul D. Barnes
Regional Commissioner

Enclosure(s):
Pub 05-11008

SSA-L8030

HOW WE FIGURED YOUR INELIGIBILITY FOR August 2008 ON

You are not eligible for SSI for August 2008 on because your resources are worth more than the $2,000.00 resources limit. On the first day of August 2008 you owned the following items which count toward the resources limit.

Your Resources That We Count

1995 CHEVROLET Truck	$2,000.00
1995 PONTIAC Truck	$2,200.00
Your Resources That We Count	$4,200.00
SSI Resources Limit for an Individual	-$2,000.00
Amount Over the Resource Limit	$2,200.00

IMPORTANT REMINDERS

We counted only the resources listed above. We generally do not count the value of a home, one vehicle, and a burial fund of up to $1,500.00. Contact your local Social Security office if you have questions about how we determined the value of your resources or wish to report that the value has changed.

If your resources shown above are reduced below $2,000.00, you may become eligible for SSI benefits. If you give away or sell resources for less than they are worth, you could be ineligible for SSI for up to 36 months. Contact your local Social Security office for information about how disposing of resources affects eligibility for SSI.

EXHIBIT NO. 4B
PAGE: 1 OF 2

Social Security Administration
RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE
Notice of Disapproved Claim

[redacted]

DATE: 09/26/2008

Claim Num[redacted]
WE's Number:

Telephone: [redacted]

We are writing about your claim for Social Security disability benefits Based on a review of your health problems you do not qualify for benefits on this claim. This is because you are not disabled under our rules.

We have enclosed information about the disability rules and more details about the decision on your claim.

ABOUT THE DECISION

Doctors and other trained staff looked at your case and made this decision. They work for your State but used our rules.

Please remember that there are many types of disability programs, both government and private, which use different rules. A person may be receiving benefits under another program and still not be entitled under our rules. This may be true in your case.

IF YOU DISAGREE WITH THE DECISION

If you disagree with this decision, you have the right to request a hearing. We will review your case and consider any new facts you have. A person who has not seen your case before will look at it.

* You have 60 days to ask for a hearing.

* The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.

* You must have a good reason for waiting more than 60 days to ask for an appeal.

* You have to ask for a hearing in writing. We will ask you to complete a form HA-501-U2, called "Request for Hearing." You may contact one of our offices or call 1-800-772-1213 to request this form. Or you may complete this form online at: http://www.socialsecurity.gov/disability/appeal. Contact one of our offices if you want help.

Form SSA-L443-U3 (7-93)
Destroy Prior Editions

I3 - CAR

Permanent Subcommittee on Investigations
EXHIBIT #4b

Social Security Administration
RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE
Notice of Disapproved Claim

* In addition, you should complete a "Disability Report-Appeal" to tell us about your medical condition since you filed your claim. You may contact one of our offices or call 1-800-772-1213 to request this form. Or, you may complete this report online after you complete the online Request for Hearing.

Please read the enclosed pamphlet, "Your Right to Question the Decision Made on Your Social Security Claim." It contains more information about the hearing.

NEW APPLICATION

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with this decision and you file a new application instead of appealing:

* You might lose some benefits, or not qualify for any benefits, and

* We could deny the new application using this decision, if the facts and issues are the same.

So, if you disagree with this decision, you should ask for an appeal within 60 days.

IF YOU WANT HELP WITH YOUR APPEAL

You can have a friend, lawyer, or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due Social Security benefits to pay toward the fee.

OTHER BENEFITS

Based on the application you filed, you are not entitled to any other benefits, besides those you may already be getting. In the future, if you think you may be entitled to other benefits you will need to apply again. (THIS SECTION DOES NOT APPLY TO YOU IF YOU HAVE ANOTHER SOCIAL SECURITY CLAIM PENDING.)

EXHIBIT NO. 10
PAGE: 1 OF 1

Social Security Administration
RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE
Notice of Disapproved Claim

IF YOU HAVE ANY QUESTIONS

If you have any questions, you may call us toll-free at 1-800-772-1213 or call your local Social Security office at the number shown on page 1. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

120 EXECUTIVE PARK LANE
SELMA AL 36701

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly.

Regional Commissioner

Enclosures:
SSA Pub. No.05-10058
Explanation of Decision
Disability Rules Factsheet

630
Form SSA-L443-U3 (7-93)
Destroy Prior Editions

I3 - CAR

Social Security Administration
RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE
Notice of Disapproved Claim

RULES FOR SOCIAL SECURITY DISABILITY

You must meet certain rules to qualify for Social Security disability benefits:

FOR DISABLED WORKER'S BENEFITS:

You must have the required work credits and your health problems must:

* keep you from doing any kind of substantial work (described below), and
* last, or be expected to last, for at least 12 months in a row, or result in death.

FOR DISABLED CHILD'S BENEFITS:

You must be age 18 or older and your health problems must:

* begin before age 22 or you must become disabled again within 7 years after the month that your earlier period of disability ended, and
* keep you from doing any kind of substantial work (described below), and
* last, or be expected to last, for at least 12 months in a row, or result in death.

FOR DISABLED WIDOW'S, WIDOWER'S OR SURVIVING DIVORCED SPOUSE'S BENEFITS:

You must be at least age 50, and your health problems must:

* keep you from doing any kind of substantial work (described below), and
* last, or be expected to last, for at least 12 months in a row, or result in death, and
* have started before the end of a special period.

The special period starts with the latest of:

***the month your spouse died, or
***the month your Social Security benefits as a parent ended, or
***the month your earlier period of widow(er)'s disability ended.

The special period ends at the close of the 84th month (7 years) after the month it started.

Social Security Administration
RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE
Notice of Disapproved Claim

INFORMATION ABOUT SUBSTANTIAL WORK

Generally, substantial work is physical or mental work you are paid to do. Work can be substantial even if it is part-time. To decide if your work is substantial, we consider the nature of the job duties, the skills and experience you need to do the job, and how much you actually earn.

Usually, we find that your work is substantial if your gross earnings average over $830 per month after we deduct allowable amounts. This monthly amount is higher for Social Security disability benefits due to blindness.

Your work may be different than before your health problems began. It may not be as hard to do and your pay may be less. However, we may still find that your work is substantial under our rules.

If you are self-employed, we consider the kind and value of your work, including your part in the management of the business, as well as your income, to decide if your work is substantial.

NON-ENGLISH SPEAKING INFORMATION

If you do not speak English, or do not speak English well, we will provide you with an interpreter at no cost to you. Or, you may wish to bring your own interpreter with you such as a friend or family member. If you want us to provide an interpreter, please tell us ahead of time.

Social Security Administration

EXHIBIT NO. 20
PAGE 1 OF 1

EXPLANATION OF DETERMINATION

CAR

Name of Claimant	W/E's Name (If CDB or DWB)	SSN	Type of Claim
[redacted]		[redacted]	INDIB

The evidence listed was used in evaluating your claim.

[redacted] Report Received 09/23/08
[redacted] Consultative Exam 09/10/08

We have determined that your condition is not severe enough to keep you from working. We considered the medical and other information, your age, education, training, and work experience in determining how your condition affects your ability to work.

You state that you are disabled because of high blood pressure, a bad back, arthritis in your knees and hand, acid reflux, eye problems, and chest pain. The evidence shows that you have some restrictions. Your restrictions prevent you from performing your past work as a [redacted] as you describe this work. However, your restrictions do not preclude you from performing that type of work as it is normally performed in the national economy.

If your condition gets worse and keeps you from working, write, call or visit any Social Security office about filing another application.

FORM APPROVED
OMB NO. 0960-0431

PHYSICAL RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT

CLAIMANT: [redacted]	SOCIAL SECURITY NUMBER: [redacted]
NUMBERHOLDER (IF CDB CLAIM):	

PRIMARY DIAGNOSIS:	RFC ASSESSMENT IS FOR:
HTN	☒ Current Evaluation ☐ Date 12 Months After Onset:
SECONDARY DIAGNOSIS: GERD	☐ Date Last Insured: _____ (Date) _____ (Date)
OTHER ALLEGED IMPAIRMENTS: BACK, WRIST, KNEE PROBLEMS, CP, ASTHMA	☐ Other (Specify):

PRIVACY ACT NOTICE: The information requested on this form is authorized by Section 223 and Section 1633 of the Social Security Act. The information provided will be used in making a decision of this claim. Failure to complete this form may result in a delay in processing the claim. Information furnished on this form may be disclosed by the Social Security Administration to another person or governmental agency only with respect to Social Security programs and to comply with Federal laws requiring the exchange of information between Social Security and other agencies.

PAPERWORK REDUCTION ACT: This information collection meets the requirements of 44 U.S.C. § 3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 20 minutes to read the instructions, gather the facts, and answer the questions. *You may send comments on our time estimate above to: SSA, 6401 Security Blvd., Baltimore, MD 21235-6401. Send only comments relating to our time estimate to this address, not the completed form.*

I. LIMITATIONS:

For Each Section A - F

- Base your conclusions on **all evidence** in file (clinical and laboratory findings; symptoms; observations, lay evidence; reports of daily activities; etc.).
- Check the blocks which reflect your **reasoned judgement**.
- Describe how the **evidence substantiates your conclusions** (Cite specific clinical and laboratory findings, observations, lay evidence, etc.).
- Ensure that you have:
  - Requested appropriate treating and examining source statements regarding the individual's capacities (DI 22505.000ff. and DI 22510.000ff.) and that you have given appropriate **weight to treating source conclusions** (See Section III.).
  - Considered and responded to **any alleged limitations imposed by symptoms** (pain, fatigue, etc.) attributable, in your judgement, to a medically determinable impairment. Discuss your assessment of symptom-related limitations in the explanation for your conclusions in A - F below (See also Section II.).
  - Responded to all allegations of physical limitations or factors which can cause physical limitations.
- **Frequently** means occurring one-third to two-thirds of an 8-hour workday (cumulative, not continuous). **Occasionally** means occurring from very little up to one-third of an 8-hour workday (cumulative, not continuous).

Continued on Page 2

Permanent Subcommittee on Investigations
EXHIBIT #4c

EXHIBIT NO. 3F

A. EXERTIONAL LIMITATIONS

☐ None established. (Proceed to section B.)

1. **Occasionally** lift and/or carry (including upward pulling) (maximum) - when less than one-third of the time or less than 10 pounds, explain the amount (time/pounds) in item 6.

   ☐ less than 10 pounds
   ☐ 10 pounds
   ☒ 20 pounds
   ☐ 50 pounds
   ☐ 100 pounds or more

2. **Frequently** lift and/or carry (including upward pulling) (maximum) - when less than two-thirds of the time or less than 10 pounds, explain the amount (time/pounds) in item 6.

   ☐ less than 10 pounds
   ☒ 10 pounds
   ☐ 25 pounds
   ☐ 50 pounds or more

3. Stand and/or walk (with normal breaks) for a total of -

   ☐ less than 2 hours in an 8-hour workday
   ☐ at least 2 hours in an 8-hour workday
   ☒ about 6 hours in an 8-hour workday
   ☐ medically required hand-held assistive device is necessary for ambulation

4. Sit (with normal breaks) for a total of -

   ☐ less than about 6 hours in an 8-hour workday
   ☒ about 6 hours in an 8-hour workday
   ☐ must periodically alternate sitting and standing to relieve pain or discomfort. (If checked, explain in 6.)

5. Push and/or pull (including operation of hand and/or foot controls) -

   ☒ unlimited, other than as shown for lift and/or carry
   ☐ limited in upper extremities (describe nature and degree)
   ☐ limited in lower extremities (describe nature and degree)

6. Explain how and why the evidence supports your conclusions in item 1 through 5. Cite the specific facts upon which your conclusions are based.

59 YOF
9/08 MED CE PE: 132/83 171#, NL HABITUS, WD, NAD, MUSCLE TONE AND STRENGTH NL W/O ATROPHY OR ABNL MOVEMENT, CNS INTACT, MOTOR STRENGTH SYM W/O OBVIOUS WEAKNESSES. SENSATION INTACT-BIL TO LIGHT TOUCH AND PAIN, OBSERVED DEXTERITY W/O ATAXIA OR TREMOR, DTRs FULL/SYM-BIL, GAIT COORDINATED AND SMOOTH.
MSK: FROM ALL 4 EXTs; C/S, T/S, T/C/L SPINE, L/S ALL WNL/FROM W/ EXCEPTION OF L/S WAS ELICITED BY EXTREME ROM; KNEES, WRISTS ALSO FROM, NO PAIN NOTED. NEURO-MOTOR W/O ANY DYSFUNCTION; PREFERENCE FOR R-HANDEDNESS OBSERVED, NO INVOLUNTARY MOVEMENTS

Continued on Page 3

6. Continue (NOTE: MAKE ADDITIONAL COMMENTS IN SECTION IV)
WERE SEEN. ABLE TO WALK ON TOES/HEELS W/O TROUBLE. BUE-FROM; NL BALANCE, GAIT AND STANCE, AND REFLEXES; 5/5 BIL UE/LE; PSY WNL. ASSESS/PLAN: NEEDS SOME PHYSIOTHERAPY FOR LBP AND WRIST/KNEE PROBLEMS. HER REFLUX AND ASTHMA ARE WELL CONTROLLED

7/18-20/08 D/C DX CP--MI R/O, UNCONTROLLED HTN; NONCOMPLIANCE; ARTHRITIS. PE: 178/95, WDWN, NAD, COARSE BS W/O CRACKLES AND WHEEZING; RRR;, NO PEDAL EDEMA, HAS A L-CALF HEALED WOUND; EKG-NSR. ASSESS: CP--ADMT TO R/O MI; MALIGNANT HTN; NONCOMPLIANCE; H/O GERD

B. POSTURAL LIMITATIONS

☐ None established. (Proceed to section C.)

	Frequently	Occasionally	Never
1. Climbing - ramp/stairs	☒	☐	☐
- ladder/rope/scaffolds	☐	☐	☒
2. Balancing	☒	☐	☐
3. Stooping	☒	☐	☐
4. Kneeling	☒	☐	☐
5. Crouching	☒	☐	☐
6. Crawling	☒	☐	☐

7. When less than two-thirds of the time for frequently or less than one-third for occasionally, fully describe and explain. Also explain how and why the evidence supports your conclusions in items 1 through 6. Cite the specific facts upon which your conclusions are based.

Continued on Page 4

C. MANIPULATIVE LIMITATIONS

☒ None established. (Proceed to section D.)

	LIMITED	UNLIMITED
1. Reaching all directions (including overhead)	☐	☐
2. Handling (gross manipulation)	☐	☐
3. Fingering (fine manipulation)	☐	☐
4. Feeling (skin receptors)	☐	☐

5. Describe how the activities checked "limited" are impaired. Also, explain how and why the evidence supports your conclusions in item 1 through 4. Cite the specific facts upon which your conclusions are based.

D. VISUAL LIMITATIONS

☒ None established. (Proceed to section E.)

	LIMITED	UNLIMITED
1. Near acuity	☐	☐
2. Far acuity	☐	☐
3. Depth perception	☐	☐
4. Accommodation	☐	☐
5. Color vision	☐	☐
6. Field of vision	☐	☐

7. Describe how the faculties checked "limited" are impaired. Also explain how and why the evidence supports your conclusions in items 1 through 6. Cite the specific facts upon which your conclusions are based.

MED CE: VISION L-20/30 R-20/30-40 OU-20/50

Continued on Page 5

E. COMMUNICATIVE LIMITATIONS

☒ None established. (Proceed to section F.)

	LIMITED	UNLIMITED
1. Hearing	☐	☐
2. Speaking	☐	☐

3. Describe how the faculties checked "limited" are impaired. Also, explain how and why the evidence supports your conclusions in items 1 and 2. Cite the specific facts upon which your conclusions are based.

F. ENVIRONMENTAL LIMITATIONS

☐ None established. (Proceed to section II.)

	UNLIMITED	AVOID CONCENTRATED EXPOSURE	AVOID EVEN MODERATE EXPOSURE	AVOID ALL EXPOSURE
1. Extreme cold	☐	☒	☐	☐
2. Extreme heat	☐	☒	☐	☐
3. Wetness	☒	☐	☐	☐
4. Humidity	☒	☐	☐	☐
5. Noise	☒	☐	☐	☐
6. Vibration	☒	☐	☐	☐
7. Fumes, odors, dusts, gases, poor ventilation, etc.	☒	☐	☐	☐
8. Hazards (machinery, heights, etc.)	☐	☐	☐	☒

9. Describe how these environmental factors impair activities and identify hazards to be avoided. Also, explain how and why the evidence supports your conclusions in items 1through 8. Cite the specific facts upon which your conclusions are based.

Continued on Page 6

9. Continue (NOTE: MAKE ADDITIONAL COMMENTS IN SECTION IV)

II. SYMPTOMS

For symptoms alleged by the claimant to produce physical limitations, and for which the following have not previously been addressed in section I, discuss whether:

A. The symptom(s) is attributable, in your judgment, to a medically determinable impairment.

B. The severity or duration of the symptom(s), in your judgment, is disproportionate to the expected severity or expected duration on the basis of the claimant's medically determinable impairment(s).

C. The severity of the symptom(s) and its alleged effect on function is consistent, in your judgment, with the total medical and nonmedical evidence, including statements by the claimant and others, observations regarding activities of daily living, and alterations of usual behavior or habits.
ALSO SEE A6

MDIs HAVE VEEN ESTAB FOR CP, HTN, GERD, ASTHMA, AND PROBS W/ LOW BACK, WRIST, AND KNEE W/O ANY SIG. LROM

ADLS REVEALS MOD LIMITIATIONS DUE TO PAIN AND REQUIRES SOME ASSISTANCE; HOWEVER, S/S APPEARS TO BE PARTIALLY CONSISTENT W/ FINDINGS

Continued on Page 7

EXHIBIT NO. 3F

III. TREATING OR EXAMINING SOURCE STATEMENT(S)

A. Is a treating or examining source statement(s) regarding the claimant's physical capacities in file?

☒ Yes

☐ No (Includes situations in which there was no source or when the source(s) did not provide a statement regarding the claimant's physical capacities.)

B. If yes, are there treating/examining source conclusions about the claimant's limitations or restrictions which are significantly different from your findings?

☐ Yes

☒ No

C. If yes, explain why those conclusions are not supported by the evidence in file. Cite the source's name and the statement date.

S[illegible] [redacted] ER 9/10/08 CE "SHE CAN PERFORM ALL ACTIVITIES W/O ASSISTANCE. SHE NEEDS TO HAVE SOME PHYSIOTHERAPY FOR HER LOWER BACK PROBLEM AS WELL AS WRIST KNEE PROBLEMS. HER REFLUX PROBLEM AND ASTHMA ARE WELL CONTROLLED.

MSS ACKNOWLEDGED

Continued on Page 8

IV. ADDITIONAL COMMENTS:

☒ THESE FINDINGS COMPLETE THE MEDICAL PORTION OF THE DISABILITY DETERMINATION.

MEDICAL CONSULTANT'S SIGNATURE:	MEDICAL CONSULTANT'S CODE:	DATE:
[redacted]	[redacted]	[redacted]

EXHIBIT NO. 4F
PAGE: 40 OF 88

Excuse From Work/School

Patient's [redacted]

Patient has been under my care since: 02-01-07

Patient will be unable to attend work/school starting: 02-01-07

Patient's anticipated return date is: 02-12-07

Reason: ✓ Injury ____ Illness ____ Maternity

Is reason work related: ✓ Yes ____ No

Briefly describe injury or illness: MULTIPLE INJURIES CONNECTED WITH JOB FALL ON 12-21-06

[redacted] 02-01-07
Date Signed

Compliments of [redacted]

Easy-to-take [redacted] Telephone Number

NIRAVAM™ ©
(alprazolam orally disintegrating tablets)
0.25 mg • 0.5 mg • 1.0 mg • 2.0 mg

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Z12053 12/05

Permanent Subcommittee on Investigations
EXHIBIT #4d

[redacted]

[redacted]
LOC/SVC: ROOM: 606

[redacted]
ADMISSION DATE: 07/18/2008
DISCHARGE DATE: 07/20/2008

DISCHARGE SUMMARY

DATE OF ADMISSION: 07/18/2008
DATE OF DISCHARGE: 07/20/2008

FINAL DIAGNOSIS
1. Chest pain--myocardial infarction ruled out.
2. Uncontrolled hypertension.
3. Noncompliance.
4. Arthritis.

DISCHARGE CONDITION: Improved.

DISCHARGE DIET: Low-fat/low-cholesterol.

DISCHARGE ACTIVITY: As tolerated.

DISCHARGE MEDICATIONS: Clonidine 0.1 mg p.o. t.i.d., Pepcid 20 mg p.o. b.i.d., Motrin 400 mg p.o. t.i.d. for 3 days, Vicodin 5 one tablet p.o. q.6h. p.r.n.

The patient will be followed up with ——— n one to two weeks.

HOSPITAL COURSE: This is [redacted] year-old black female who used to have a history of hypertension and D ——— is her physician. She apparently presented to the ER with complaint of frontal chest pain, but patient also complained of pain all over her body, including back, bilateral ribs, and lower extremities. The patient initially was found to have uncontrolled hypertension with BP 178/95. The patient has been taking blood pressure medication for quite some time. The patient was admitted for treatment. Later, the patient had 3 sets of negative EKGs and troponin I and anti-hypertensive medication was adjusted. On the discharge day, the patient felt much better. Motrin has been given for chronic arthritic pain. The patient's pain seems to be improving. The patient was then considered to be stable for discharge and will need to have close outpatient follow-up. Detailed instructions were given. Discharge time spent was 31 minutes.

Permanent Subcommittee on Investigations
EXHIBIT #4e

[redacted]

2008-Jul-20 12:58 PM [redacted] 19/30

EXHIBIT NO. 48
PAGE: 48 OF 98

[redacted] PAGE: 3

[redacted] MR NUM [redacted]

T:DATE: 07/18/2008 19:52
D:DATE: 07/18/2008 17:35
JOB #: 114076

[redacted]

[redacted]
MRN [redacted]
DOB [redacted]
Date of Service: **09/10/2008**

Reason For Visit
Disabled secondary to Hbp, back pain, arthritis in knees/hand, acid reflux,eye problem.
HPI
DD [redacted] NP is here for disability determination secondary to

1).HEADAC [redacted] NP complains of a headache.
LOCATION: Bilateral
QUALITY / CHARACTER: Patient describes symptoms as dull. Patient reports symptoms are getting worse.
SEVERITY: Moderate
DURATION / ONSET: Symptoms started about 20years ago.
TIMING: Sudden onset 10 times per Month]
MODIFYING FACTORS: Symptoms are triggered by nothing. Symptoms are relieved by nothing.
ASSOCIATED SYMPTOMS: Vision Changes, Photophobia

2)GERD
QUALITY / CHARACTER: Her symptoms are getting worse.
SEVERITY: Moderate
DURATION / ONSET: Symptoms started 3 years ago.
TIMING: The symptoms are intermittent. They occur after meals.
MODIFYING FACTORS: The symptoms seem to improve with upright posture, antacids.
ASSOCIATED SYMPTOMS: Wheezing and chest discomfort in the presternal area and radiating towards throat.

3)ASTHMA : She has had no interval significant asthma episodes or ED visits.
QUALITY / CHARACTER: Symptoms have been better recently.
SEVERITY: Mild She is rarely using her rescue inhaler.
DURATION / ONSET: Patient has had asthma symptoms 1 times over the past week.
TIMING: Wheezing occurs 10 times per mnonth. Wheezing does not cause patient to wake from sleep.
MODIFYING FACTORS: Symptoms are triggered by nothing. they get relieved by OTC meds. She takes meds for cold and cough and her wheezing subsides.
ASSOCIATED SYMPTOMS: None.
4)HYPERTENSION: The patient presents with of hypertension.
QUALITY / CHARACTER: Patient reports symptoms are stable.
SEVERITY: Home blood pressures have been greater than 160/100.
MODIFYING FACTORS:
--Patient has not been following a reduced sodium diet.
She is not getting adequate exercise.
She is not taking antihypertensive medications correctly. because she has no money.
ASSOCIATED SYMPTOMS: none

Permanent Subcommittee on Investigations
EXHIBIT #4f

Patie[redacted]
MR[redacted]

5)BACK PAI[redacted]complains of low back pain.
LOCATION: Pain does not radiate.
QUALITY / CHARACTER: Patient describes pain as dull. Patient reports pain is getting worse.
SEVERITY: Moderate Rates pain on a scale of 1-10 as 5.
DURATION / ONSET: Patient has had back pain for 3 years
CONTEXT: Pain at rest.
MODIFYING FACTORS: Symptoms are triggered by bending,] lifting. Symptoms are relieved by rest. Recent injury? no
ASSOCIATED SYMPTOMS: None.
she said that there is 4-5 disc prolapse for which I didnt have documentation from her records which i have.
6)KNEE PAIN: The patient complains of pain in the left knee.
LOCATION: She states the pain is over the patella, diffuse. The pain does not radiate.
QUALITY / CHARACTER: The patient describes the pain as dull. Patient reports the pain is getting worse.
SEVERITY: Moderate Rates pain on a scale of 1-10 as 5.
DURATION / ONSET: Patient has had knee pain for 3 years.
MODIFYING FACTORS: The pain is worsened by weight bearing, walking, climbing stairs. The pain is relieved by rest. Iinjury? no
ASSOCIATED SYMPTOMS: None.
7) She has bilateral wrist pain. She has a trigger finger in rt ring finger. she cannot work with that hand because she gets pain if she works more with that hand. she cannot make a fist after some time as per history. she has similar problem with rt hand. no injury reported.

She is following [redacted]montgomery.She is taking vicodin 5/500for pain, clonidine0.1 mg tid, micardis hct for hyper tension and omeprazole for acid reflux problem.

Personal Hx

Behavioral history: No tobacco use and no previous history of smoking.
Alcohol: Not using alcohol.
Drug use: Not using drugs.
Habits: Not exercising regularly.
Home environment: The racial background is black.
Education: The highest level of education achieved: completed some college.
Work: Occupation Teacher aid.
Activities: Activities nothing much i be hurting to much.
Religious affiliation: Religion: Methodist.
Marital: Single.

PMH

History of hypertension (401.9).
History of asthma (493.90).
History of arthritis (716.90).

Family Hx

Hypertension
Heart disease

Pati[redacted]

Asthma
Diabetes mellitus
Arthritis
Migraine headache.

PSH
Neg.

Allergies
No Known Drug Allergy.

ROS
Systemic symptoms: no general body aches and pains.
Head symptoms: No head symptoms. Headache present
Eye symptoms: none
Otolaryngeal symptoms: No otolaryngeal symptoms.
Cardiovascular symptoms: heart burn with acid reflux. presternal pain.hypertension.

Pulmonary symptoms: no SOB orcoughing history of asthma
Gastrointestinal symptoms: No gastrointestinal symptoms
Genitourinary symptoms: No genitourinary symptoms
Endocrine symptoms: No endocrine symptoms
Musculoskeletal symptoms: low back pain pain and pain at the wrist bilaterally.Knee pain.

Neurological symptoms: No neurological symptoms
Psychological symptoms: none
Skin symptoms: No skin symptoms.

Vital Signs
Recorded by [illegible] on 10 Sep 2008 08:50 AM
BP:132/83, RUE, Sitting,
HR: 74 b/min, R Radial,
Weight: 171 lb.

Physical Exam
GENERAL APPEARANCE: Normal habitus. Well developed, well groomed. Appears stated age. No acute distress. Color good.
MENTAL STATUS: Appears alert and oriented. Affect appropriate.
SKIN: Skin color and turgor normal. No suspicious lesions, masses, rashes, or ulcerations. Nails and hair appear normal.
HEAD: Normocephalic.
EARS: External ear w/o scars, masses, or lesions. External auditory canal intact, clear, and w/o lesions. TMs intact with normal light reflex and landmarks. Acuity to conversational tones good.
EYES: PERRLA, extraocular movements intact. Lids w/o defect, conjunctiva and sclera appear normal. Fundi w/o papilledema, hemorrhage, exudates, or arterial abnormalities.
NOSE: Nasal mucosa and turbinates pink, septum midline, no lesions.
MOUTH: Teeth in good repair. Gums pink w/o lesions. Normal appearing mucosa, palate, and tongue.

Patient[redacted]
M[redacted]

OROPHARYNX: Moist w/o exudate, erythema, or swelling.
NECK: Symmetric, trachea midline. Thyroid nontender w/o enlargement or masses. Carotid pulses normal with no bruits. No cervical lymphadenopathy.
BREASTS:deferred as no complaints
CHEST: Respirations unlabored with normal diaphragmatic excursion. Chest wall symmetric with no masses. Breath sounds clear bilaterally w/o wheezes, rubs, rales, or rhonchi.
CV: Normal precordium and PMI w/o lifts, heaves, or thrills. Normal S1 and S2 w/o murmur, rub, gallop, or click. Capillary refill within 2 seconds. No edema, clubbing, or cyanosis. No varicosities. Radial, femoral, dorsalis pedis, and posterior tibial pulses full and symmetrical.
GI/ABDOMEN: Abdomen soft with normal bowel sounds. No guarding or rebound. No palpable masses or tenderness. Liver and spleen are w/o tenderness or enlargement. No aortic widening. No inguinal adenopathy.
GU:deferred as no complaints
RECTAL: deferred as no complaints
MS: Muscle tone and strength normal for age, w/o atrophy or abnormal movement.
NEUROLOGICAL: Cranial nerves II-XII intact. Motor strength symmetrical with no obvious weaknesses. Superficial sensation intact bilaterally to light touch and pain. Observed dexterity w/o ataxia or tremor. Deep tendon reflexes full and symmetric bilaterally. Gait coordinated and smooth.
no need of stick or cane for assisitance.

Musculoskeletal system:

General/bilateral: A range of motion evaluation was performed of extremity(s) (FROM in all 4 ext).
Musculoskeletal system:
Active flexion of the cervical spine 90 degrees
Active extension of the cervical spine 75 degrees
Active cervical spine rotation to the right 90 degrees
Active cervical spine rotation to the left 90 degrees
Active cervical spine lateral flexion to the left 45 degrees
Active cervical spine lateral flexion to the right 45 degrees
Cervical spine showed no tenderness on palpation
Cervical spine showed no instability
Cervical spine showed no weakness

Thoracic Spine:
General/bilateral:
Thoracic spine had a normal appearance
Thoracic spine exhibited no spasm of the paraspinal muscles
Thoracic spine exhibited no instability.

Thoracolumbar Spine (Motion):
General/bilateral:
Thoracolumbar spine demonstrated full range of motion
Thoracolumbar spine pain was not elicited by motion

[redacted]

Thoracolumbar spine showed no instability

General/bilateral:
Active lumbosacral spine rotation to the left 60 degrees
Active lumbosacral spine rotation to the right 60 degrees
Active lumbosacral spine lateral flexion to the left 30 degrees
Active lumbosacral spine lateral flexion to the right 30 degrees

Lumbar / Lumbosacral Spine (Motion):
General/bilateral:
Lumbosacral spine demonstrated full range of motion
Lumbosacral spine flexion was normal
Lumbosacral spine extension was normal.
Lumbosacral spine pain was elicited by extreme range of motion.

wrist :
Dorsiflexion- 60 degrees bilateral
palmar flexion: 70 degrees bilateral
radial deviation : 20 degrees bilateral
ulnar deviation : 30 degrees bilateral

Knees :
flexion : 150 degrees bilateral
extension: 0 degrees bilateral.

Neurological:
Motor:
A motor exam demonstrated no dysfunction
A preference for right-handedness was observed
No involuntary movements were seen

Pt able to walk on toes and heels without trouble.

Upper ext: Full range of motion of arms, hands and fingers

Balance: Normal.

Gait And Stance: Normal.

Reflexes: Normal.

Muscle Strength:
Upper Ext:

[redacted]

Bilateral shoulder and forarm Flex/Ext 5/5
Bilateral Shoulder abduct/adduct 5/5
Bilateral internal/external rotation at shoulder 5/5
Bilateral supinate/pronate 5/5

Lower Ext:
Bilateral Hips flex/ext/abduct/adduct 5/5
Bilateral lower legs flex/extend 5/5
Bilateral ankles dosi/plantar flex 5/5

Psychiatric Exam: Mood and affect congruent and was normal

No assistive devices uses

Results
SELMA In House Eye Exam 10 Sep 2008 03:33 PM
• Both Eyes are 20/50, 10 Sep 2008
- Left Eye OS: 20/30
- Right Eye OD: 20/30-40.

Assessment
• Visit: to issue a certificate of disability (V68.01)

Orders
SELMA In House Eye Exam.

Plan
She can perform all activities without asistance. she needs to have some physiotherapy for her lower back problem as well as wrist and knee problems. Her reflux problem and asthma are well controlled.

Level of Service
Established outpatient minimal service 99211

Signature
Signed By: C[illegible] 09/10/2008 8:54 AM CST.
Signed By: [illegible] : 09/10/2008 5:32 PM CST.

09/10/08

Social Security Administration
Please read the back of the last copy before you complete this form.

Form Approved
OMB No. 0960-0[illegible]

EXHIBIT NO. 4B
PAGE: 2 OF 2

Name	Social Security Number
[redacted]	[redacted]
Wage Earner (If Different)	Social Security Number

Part I — **APPOINTMENT OF REPRESENTATIVE**

I appoint this person, [redacted]
(Name and Address)

to act as my representative in connection with my claim(s) or asserted right(s) under:

☒ Title II (RSDI) ☒ Title XVI (SSI) ☐ Title XVIII (Medicare Coverage) ☐ Title VIII (SVB)

This person may, entirely in my place, make any request or give any notice; give or draw out evidence or information; get information; and receive any notice in connection with my pending claim(s) or asserted right(s).

☒ I appoint, or I now have, more than one representative. My main representative is [illegible]
(Name of Principal Representative)

Signature (Claimant)	Address
X [redacted]	[redacted]
Telephone [redacted]	Fax Number (with Area Code) — Date 10-10-08

Part II — **ACCEPTANCE OF APPOINTMENT**

I, [illegible], hereby accept the above appointment. I certify that I have not been suspended or prohibited from practice before the Social Security Administration; that I am not disqualified from representing the claimant as a current or former officer or employee of the United States; and that I will not charge or collect any fee for the representation, even if a third party will pay the fee, unless it has been approved in accordance with the laws and rules referred to on the reverse side of the representative's copy of this form. If I decide not to charge or collect a fee for the representation, I will notify the Social Security Administration. (Completion of Part III satisfies this requirement.)

Check one: ☒ I am an attorney. ☐ I am a non-attorney who is eligible to receive direct fee payment.
☐ I am not an attorney and I am ineligible to receive direct fee payment.

I have been disbarred or suspended from a court or bar to which I was previously admitted to practice as an attorney. ☐ YES ☒ NO

I have been disqualified from participating in or appearing before a Federal program or agency. ☐ YES ☒ NO

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

Signature (Representative)	Address
[illegible]	[redacted]
Telephone Number (with Area Code) [redacted]	Fax Number (with Area Code) [redacted] — Date 10-10-08

Part III (Optional) — **WAIVER OF FEE**

I waive my right to charge and collect a fee under sections 206 and 1631(d)(2) of the Social Security Act. I release my client (the claimant) from any obligations, contractual or otherwise, which may be owed to me for services I have provided in connection with my client's claim(s) or asserted right(s).

Signature (Representative)	Date

Part IV (Optional) — **WAIVER OF DIRECT PAYMENT**

by Attorney or Non-Attorney Eligible to Receive Direct Payment

I waive only my right to direct payment of a fee from the withheld past-due retirement, survivors, disability insurance or supplemental security income benefits of my client (the claimant). I do not waive my right to request fee approval and to collect a fee directly from my client or a third party.

Signature (Attorney or Eligible Non-Attorney (for Direct Payment) Representative)	Date

Form SSA-1696-U4 (1-2005) EF (1-2005) (See Important Information on Reverse) FILE COPY
Destroy Prior Editions

Permanent Subcommittee on Investigations
EXHIBIT #4g

EXHIBIT NO. 3B
PAGE: 2 OF 2

FEE AGREEMENT

FEES FOR SERVICES

My representative and I understand that for a fee to be payable, the Social Security Administration (SSA) must approve any fee my representative charges or collects from me for services my representative provides in proceedings before SSA in connection with my claim(s) for benefits.

We agree that if SSA favorably decides the claim(s), I will pay my representative a fee equal to the lesser of 25 percent of the past-due benefits resulting from my claim(s), however fee is not to exceeds $5300.00.

[For concurrent Titles II and XVI benefits] We understand that Social Security past-due benefits are the total amount of money to which I [and my auxiliary benefiticiary(ies)] become entitled through the month before the month SSA effectuates a favorable administrative determination or decision on my Social Security claim and that Supplemental Security income (SSI), past-due benefits are the total amount of money for which I become eligible through the month SSA effectuates a favorable administrative determination or decision on my SSI claim.

I will pay the costs of obtaining any medical records, or reimburse my representative for any expenditures made on my behalf (except for postage and stationary costs). We have both received signed copies of this agreement.

[redacted]
CLAIMANT

DATE: 10/10/08

February 3, 2010, 08:27
PAGE 1

NH[redacted]

UNIT: [redacted]

[redacted]

REQUEST FOR HEARING BY ADMINISTRATIVE LAW JUDGE

On October 10, 2008, we talked with you and completed your REQUEST FOR HEARING for SOCIAL SECURITY BENEFITS. We stored your REQUEST FOR HEARING information electronically in our records and attached a summary of your statements.

What You Need To Do

- Review your REQUEST FOR HEARING to ensure we recorded your statements correctly.
- If you agree with all your statements, you may retain the REQUEST FOR HEARING for your records.
- If you disagree with any of your statements, you should contact us within 10 days after the date of this notice to let us know.

MY NAME IS[redacted]

MY SOCIAL SECURITY NUMBER IS [redacted]

I REQUEST A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE. I DISAGREE WITH THE DETERMINATION MADE ON MY CLAIM FOR DISABILITY-WORKER OR CHILD BENEFITS BECAUSE MY CONDITIONS HAVE NOT IMPROVED. I AM UNABLE TO MA INTAIN GAINFUL EMPLOYEMENT. I AM 59 YEARS OLD AT THIS TIME.

I AM SUBMITTING ADDITIONAL EVIDENCE WITH THIS REQUEST.

I WISH TO APPEAR AT A HEARING. I UNDERSTAND THAT AN ADMINISTRATIVE LAW JUDGE OF THE OFFICE OF DISABILITY ADJUDICATION AND REVIEW WILL BE APPOINTED TO CONDUCT THE HEARING OR OTHER PROCEEDINGS IN MY CASE. I ALSO UNDERSTAND THAT THE ADMINISTRATIVE LAW JUDGE WILL SEND ME NOTICE OF THE TIME AND PLACE OF A HEARING AT LEAST 20 DAYS BEFORE THE DATE SET FOR A HEARING.

IT COULD BE ESPECIALLY USEFUL IN MY CASE SINCE THE ADMINISTRATIVE LAW JUDGE WOULD HAVE AN OPPORTUNITY TO HEAR AN EXPLANATION AS TO HOW MY IMPAIRMENTS PREVENT ME FROM WORKING AND RESTRICT MY ACTIVITIES.

Permanent Subcommittee on Investigations
EXHIBIT #4h

NH [redacted]

I AM REPRESENTED BY [redacted] WHO IS AN ATTORNEY.

MY PHONE NUMBER IS [redacted]

DATE October 10, 2008.

EXHIBIT NO. 4F
PAGE: 88 OF 88

CLINICAL ASSESSMENT OF PAIN

PATIEN[redacted]

Please answer the following questions as they relate to the patient named above according to your best judgment.

1. To what extent is pain of significance in the treatment of this patient? (circle letter)

A	B	C	D
Pain is not present to a significant degree.	Pain is present but does not prevent functioning in every-day activities or work.	Pain is present to such an extent as to be distracting to adequate performance of daily activities or work.	Pain is present and found to be intractable and virtually incapacitating to this individual.

2. To what extent will physical activity, such as walking, standing, bending, stooping, moving or extremities, etc., increase the level of pain experienced by this patient? (circle letter).

A	B	C	D
No increase in pain whatsoever.	Some increase but not to such an extent as to prevent adequate functioning in such tasks.	Greatly increased pain and to such a degree as to cause distraction from task or total abandonment of task.	Increase of pain to such an extent that bed rest and/or medication is necessary.

3. To what extent will the prescribed medication impact upon this patient's ability to work? (circle letter)

A	B	C	D
Should be able to perform full job duties without any decease in work effectiveness.	Some limitations may be present but not to such a degree as to create serious problems in most instances.	Drug side effects can be expected to be severe and to limit effectiveness due to distraction, inattention drowsiness, etc	Patient will be totally restricted and unable to function at a productive level of work.

4. Can this patient's medical condition reasonably be expected to produce the pain complained of?

✓ Yes _____ No

Comments: _____

Date: 01-06-10 MD

Physician Signature

Permanent Subcommittee on Investigations
EXHIBIT #4i

[redacted]

(The following is a transcript in the hearing held before Vincent P. Intoccia, Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, on January 7, 2010, at Selma, Alabama, in the case of [redacted]t, Social Security Number [redacted] The Claimant appeared in person and was represented by [redacted]. Attorney. Also present was [redacted], Vocational Expert.)

(The hearing commenced at 8:44 a.m. on January 7, 2010.)

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

ALJ: The claim of [redacted]ocial Security Number [redacted] Her Attorney is also here, [redacted] We have [redacted] as a VE today. We have two new paper exhibits we're going to have to scan into the e-file. The first one is from [redacted] (Phonetic) and that will be Exhibit 4F. The second one is from [redacted] G[redacted] (Phonetic). And that will be Exhibit 5F. Any objection, question, comments about any of those exhibits?

ATTY: No, Judge.

ALJ: We'll go ahead and admit into the record then Exhibit 1A through 10B, through 5D, through 9E, through 5F.

(Exhibits, previously identified, were received into evidence and made a part of the record thereof.)

ALJ: Did you have an opening?

ATTY: Judge, we believe this Claimant would meet Grid Rule 201.06 based on the fact that the Claimant is over the age of 55 and there's significant job adjustment after the age of 55.

ALJ: Okay. And I really don't have any questions for [redacted] unless you do?

ATTY: No, Judge.

ALJ: Swear you in, Doctor? Can we enter the typical

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EXHIBIT #4j

stipulations for the VE?

ATTY: Yes, sir.

ALJ: Is there anything, Doctor, you need to know?

VE: No, sir.

(The Vocational Expert, [redacted] having been first duly sworn, testified as follows:)

EXAMINATION OF VOCATIONAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q Could you identify those three jobs that [redacted] performed during the period at issue by job title, exertional, and skill level?

A Yes, sir. She has worked as a [redacted] It's considered light work by DOT standards and is skilled at an SVP:6. The DOT is [redacted]. The other, another job is [redacted] I as in Roman Numeral I, light work in exertion, skilled at an SVP:6. The DOT number is [redacted] And then a [redacted] light work in exertion, unskilled at an SVP:2 and the DOT is [redacted].

Q And there's transferable skills with job one and two?

A Yes, sir, from the skilled jobs there's -- they're transferable down to sedentary.

Q And at age 55, Doctor, would it be true there'd be significant vocational adjustment?

A I would believe so. Yes, sir.

Q And there's no transferable skills, of course, with a courier?

A Correct.

Q Everything's consistent with the DOT?

A It is.

Q Let's assume a hypothetical individual, same vocational

profile as [redacted] during the period at issue. Let's assume that such an individual could perform a full range of sedentary work activity and then let's superimpose on top of that the pain assessment by ——— otherwise set forth at Exhibit 5F, dated 1/6/2010. If we superimpose those non-exertional limitations by the pain on top of the, the full range of sedentary work activity, could someone under those facts and circumstances go back to any of those three jobs or any other jobs?

A No, sir, neither.

Q What stands out to you, Doctor?

A Well, on ——— pain assessment he, on, on the first and second factor he gave a, a C and a D. D says pain is present and found to be intractable and virtually incompacitating to the individual. On the, the second factor he also listed a C and a D. D says the increase of pain to such an extent that bed rest and/or a medication is necessary upon physical activity. And then the third factor, the, he indicated a, a C evaluation. To what extent will side effects impact upon the ability? The drug side effects can be expected to be severe and to limit effectiveness due to distraction, inattention, and drowsiness, etcetera. So that would preclude employment.

ALJ: Thank you, Doctor. Questions, ———

ATTY: No, Judge.

ALJ: Did you have a closing?

ATTY: No, Judge.

ALJ: And you've had the opportunity to look over Exhibit 2A --

ATTY: Yes.

ALJ: -- which is ALJ Bench Decision Check Sheet?

ATTY: Yes, Judge.

ALJ: Any objection, question, comments?

ATTY: No, Judge.

ALJ: We'll go ahead and admit that into the record as Exhibit 2A. And after review of the available evidence of record it appears that a wholly favorable Bench Decision can be issued in this particular claim. This claim is a Title II Claim. It was filed 8/13/08. The onset date's listed as 8/15/07. There's under SGA work activity in '08, which is not preclusive of going through the rest of the sequential evaluation process steps. Essential, [redacted] is entitled to a Step Five finding within the framework of Grid Rule 201.06 and also is correlated with the testimony of the Vocational Expert enlisted during the hearing who, after classifying the jobs she performed during the period at issue, was requested to assume a hypothetical individual, same vocational profile as [redacted]. He was then requested to assume a full range of sedentary work activity and then superimpose non-exertional limitations and restrictions from one of the treating physicians otherwise found in Exhibit 5F, dated 1/6/2010. He was then presented with two questions. Number one, could someone return to any of those past jobs and number two, if not, could they perform other jobs. He testified in the negative essentially based upon the combination of pain and side effects set forth at Exhibit 5F. And as such [redacted]s been disabled since the onset date. It's noted that although transferable skills exist at

jobs one and two, per the VE there is significant vocational adjustment at age 55 and, as such, Grid Rule, the framework of Grid Rule 201.06 still applies. And this would be further associated with Social Security Ruling 82.41 that permits such. This concludes the hearing procedure. Thank you, [redacted].

ATTY: Thank you, Judge.

CLMT: Thank you.

(The hearing closed at 9:13 a.m. on January 7, 2010.)

C E R T I F I C A T I O N

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded at the hearing held in the case of [redacted] before Administrative Law Judge Vincent P. Intoccia.

Nancy L. Kayser, Transcriber
Free State Reporting, Inc.

Caroline Musterman, Proofreader
Free State Reporting, Inc.

SOCIAL SECURITY ADMINISTRATION

Refer To: [redacted]

Office of Disability Adjudication and Review
4344 Carmichael Rd
Suite 200
Montgomery, AL 36106-3730

Date: January 25, 2010

[redacted]

NOTICE OF DECISION FULLY FAVORABLE

I have made a fully favorable decision in your case. My decision is based on your period of disability and disability insurance benefits application filed on August 13, 2008.

I announced the basis for my decision at the hearing held on January 7, 2010. I adopt here those findings of fact and reasons.

To summarize briefly, I found you disabled as of August 15, 2007 because of arthritis; obesity; hypertension; GERD; asthma; degenerative disc disease L4-L5; spinal stenosis; and glaucoma so severe that you are unable to perform any work existing in significant numbers in the national economy.

If you want more information about my decision, you or your representative should file a written request for this information at any local Social Security office or a hearing office. Please include the Social Security number shown above on your request. If you ask for it, we will provide you with a record of my oral decision at the hearing.

This Decision is Fully Favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another office may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

The Appeals Council May Review The Decision On Its Own

The Appeals Council may decide to review my decision even though you do not ask it to do so. To do that, the Council must mail you a notice about its review within 60 days from the date shown above. Review at the Council's own motion could make the decision less favorable or unfavorable to you.

If You Disagree With The Decision

Permanent Subcommittee on Investigations
EXHIBIT #4k

If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you or your representative must request the Appeals Council to review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the Appeals Council, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22041-3255. Please put the Social Security number shown above on any appeal you file.

Time To File An Appeal

To file an appeal, you must file your request for review within 60 days from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time To Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider with your request for review.

How An Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The Council may review your case for any reason. It will review your case if one of the reasons for review listed in our regulations exists. Section 404.970 and 416.1470 of the regulation list these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

If No Appeal And No Appeals Council Review

See Next Page

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (334)875-0587. Its address is Social Security, 120 Executive Park Ln, Selma, AL 36701-7734.

/s/ Vincent P. Intoccia

Vincent P. Intoccia
Administrative Law Judge

January 25, 2010
Date

Enclosures:
Form HA-L15 (Fee Agreement Approval)

cc: [redacted]

EXHIBIT NO. 2A
PAGE: 2 OF 5

ALJ Bench Decision Checksheet – Print Version

Claimant Name: [redacted] **SSN:** [redacted]

DIB Application Date: 8-13-08 **Hearing Date:** 1-7-2010

SSI Application Date: N/A **DWB Application Date:**

Date Last Insured: 9-30-2010 **Established Onset Date:** 8-15-07

EOD is ☑ AOD ☐ Amended AOD ☐ Current Appl. Date (SSI Only) ☐ Prior Appl. Date (SSI Only)

☐ Prior Application ☐ Reopened ☐ Not Reopened

Prior Application Date(s): T2 _____ T16 _____

Reason for Reopening ☐ Within one year ☐ Good cause ☐ Grounds for reopening at any time

☑ Work After Onset ☐ UWA ☑ Not SGA ☐ TWP

Severe Impairment(s) (singly or in combination): Arthritis; Obesity; [redacted] htn; GERD & Asthma; DDD L4-L5; Spinal Stenosis; Glaucoma.

☐ Impairment(s) MEETS Listing # _____

☐ Impairment(s) EQUALS Listing # _____

☐ Child is Functionally Equal to Listings

Mrk	Extr		Mrk	Extr	
☐	☐	1. Acquiring and Using Information	☐	☐	4. Moving about and Manipulating objects
☐	☐	2. Attending and Completing Tasks	☐	☐	5. Caring for Self
☐	☐	3. Interacting with Others	☐	☐	6. Health and Physical Well-being

Mental Impairment Analysis (Part B)

Restriction of Activities of Daily Living	☐ None	☐ Mild	☐ Moderate	☐ Marked	☐ Extreme
Difficulties Maintaining Social Functioning	☐ None	☐ Mild	☐ Moderate	☐ Marked	☐ Extreme
Difficulties Maintaining Concentration-Pace	☐ None	☐ Mild	☐ Moderate	☐ Marked	☐ Extreme
Episodes of Decompensation	☐ None	☐ One or Two	☐ Three	☐ Four or More	

Mental Impairment Analysis (Part C)

☐ 12.02, 12.03, or 12.04 w/ 2 yrs med. history & more than minimal limitation &

- ☐ Residual disease process w/ marginal adjustment so that minimal changes cause decomp.
- ☐ Current Hx. 1+years in highly supportive living arrangement w/ continuing need for same
- ☐ Repeated episodes of decompensation, each of extended duration

☐ 12.06 (inability to function independently outside area of home)

* Unemployment in 08+09 = not SGA
✓ Under SGA (self-employment) 08 = not SGA

FORM APPROVED
OMB No. 0960-0431

MENTAL RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT

NAME	SOCIAL SECURITY NUMBER
[redacted]	[redacted]

CATEGORIES *(From 1C of the PRTF)*	ASSESSMENT IS FOR:
12.05	☒ Current Evaluation ☐ 12 Months After Onset:
	☒ Date Last Insured: 03/31/2005 (Date) _____ (Date)
	☐ Other: _____ (Date) to _____ (Date)

I. SUMMARY CONCLUSIONS

This section is for recording summary conclusions derived from the evidence in file. Each mental activity is to be evaluated within the context of the individual's capacity to sustain that activity over a normal workday and workweek, on an ongoing basis. Detailed explanation of the degree of limitation for each category (A through D), as well as any other assessment information you deem appropriate, is to be recorded in Section III (Functional Capacity Assessment).

If rating category 5 is checked for any of the following items, you MUST specify in Section II the evidence that is needed to make the assessment. If you conclude that the record is so inadequately documented that no accurate functional capacity assessment can be made, indicate in Section II what development is necessary, but DO NOT COMPLETE SECTION III.

	Not Significantly Limited	Moderately Limited	Markedly Limited	No Evidence of Limitation in this Category	Not Ratable on Available Evidence
A. UNDERSTANDING AND MEMORY					
1. The ability to remember locations and work-like procedures.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
2. The ability to understand and remember very short and simple instructions.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
3. The ability to understand and remember detailed instructions.	1. ☐	2. ☐	3. ☒	4. ☐	5. ☐
B. SUSTAINED CONCENTRATION AND PERSISTENCE					
4. The ability to carry out very short and simple instructions.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
5. The ability to carry out detailed instructions.	1. ☐	2. ☐	3. ☒	4. ☐	5. ☐
6. The ability to maintain attention and concentration for extended periods.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
7. The ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
8. The ability to sustain an ordinary routine without special supervision.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
9. The ability to work in coordination with or proximity to others without being distracted by them.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
10. The ability to make simple work-related decisions.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐

Permanent Subcommittee on Investigations
EXHIBIT #5a

	Not Significantly Limited	Moderately Limited	Markedly Limited	No Evidence of Limitation in this Category	Not Ratable on Available Evidence
Continued — SUSTAINED CONCENTRATION AND PERSISTENCE					
11. The ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
C. SOCIAL INTERACTION					
12. The ability to interact appropriately with the general public.	1. ☐	2. ☒	3. ☐	4. ☐	5. ☐
13. The ability to ask simple questions or request assistance.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
14. The ability to accept instructions and respond appropriately to criticism from supervisors.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
15. The ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
16. The ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
D. ADAPTATION					
17. The ability to respond appropriately to changes in the work setting.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
18. The ability to be aware of normal hazards and take appropriate precautions.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
19. The ability to travel in unfamiliar places or use public transportation.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
20. The ability to set realistic goals or make plans independently of others.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐

II. REMARKS: If you checked box 5 for any of the preceding items or if any other documentation deficiencies were identified, you MUST specify what additional documentation is needed. Cite the item number(s), as well as any other specific deficiency, and indicate the development to be undertaken.

☐ Continued on Page 3

☐ Continued on Page 4

III. FUNCTIONAL CAPACITY ASSESSMENT

Record the elaborations on the preceding capacities in this section. Complete this section ONLY after the SUMMARY CONCLUSIONS section has been completed. Explain your summary conclusions in narrative form. Include any information which clarifies limitation or function. Be especially careful to explain conclusions that differ from those of treating medical sources or from the individual's allegations.

Can perform only simple tasks with routine supervision. Can relate on a superficial work basis.

☐ Continued on Page 4

☐ THESE FINDINGS COMPLETE THE MEDICAL PORTION OF THE DISABILITY DETERMINATION.

MEDICAL CONSULTANT'S SIGNATURE	DATE:
[redacted]	[redacted]

Continuation Sheet – Indicate section(s) being continued.

Privacy Act Notice: The information requested on this form is authorized by Section 223 and Section 1633 of the Social Security Act. The information provided will be used in making a decision on this claim. Failure to complete this form may result in a delay in processing the claim. Information furnished on this form may be disclosed by the Social Security Administration to another person or governmental agency only with respect to Social Security programs and to comply with federal laws requiring the exchange of information between Social Security and other agencies.

Paperwork Reduction Act: This information collection meets the requirements of 44 U.S.C. § 3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 20 minutes to read the instructions, gather the facts, and answer the questions. *You may send comments on our time estimate above to: SSA, 1338 Annex Building, Baltimore, MD 21235-6401. Send only comments relating to our time estimate to this address, not the completed form.*

Form Approved
OMB No. 0960-0413

PSYCHIATRIC REVIEW TECHNIQUE

Name [redacted]	SSN [redacted]
NH (If different from above)	SSN - -

I. MEDICAL SUMMARY

A. Assessment is from: 05/01/2002 **to** current

B. Medical Disposition(s):

1. ☐ No Medically Determinable Impairment
2. ☐ Impairment(s) Not Severe
3. ☐ Impairment(s) Severe But Not Expected to Last 12 Months
4. ☐ Meets Listing _____ _____ _____ (Cite Listing)
5. ☐ Equals Listing _____ _____ _____ (Cite Listing)
6. ☒ RFC Assessment Necessary
7. ☐ Coexisting Nonmental Impairment(s) that Requires Referral to Another Medical Specialty
8. ☐ Insufficient Evidence

C. Category(ies) Upon Which the Medical Disposition is Based:

1. ☐ 12.02 Organic Mental Disorders
2. ☐ 12.03 Schizophrenic, Paranoid and Other Psychotic Disorders
3. ☐ 12.04 Affective Disorders
4. ☒ 12.05 Mental Retardation
5. ☐ 12.06 Anxiety-Related Disorders
6. ☐ 12.07 Somatoform Disorders
7. ☐ 12.08 Personality Disorders
8. ☐ 12.09 Substance Addiction Disorders
9. ☐ 12.10 Autism and Other Pervasive Developmental Disorders

☐ **These findings complete the medical portion of the disability determination.**

MC/PC's Signature [redacted]	Date [redacted]
MC/PC's Printed Name	Code

Form SSA-2506-BK (06-2001) Destroy Prior Editions

Permanent Subcommittee on Investigations
EXHIBIT #5b

II. **DOCUMENTATION OF FACTORS THAT EVIDENCE THE DISORDER**

A. 12.02 Organic Mental Disorders

☐ Psychological or behavioral abnormalities associated with a dysfunction of the brain ... as evidenced by at least one of the following:

1. ☐ Disorientation to time and place
2. ☐ Memory impairment
3. ☐ Perceptual or thinking disturbances
4. ☐ Change in personality
5. ☐ Disturbance in mood
6. ☐ Emotional lability and impairment in impulse control
7. ☐ Loss of measured intellectual ability of at least 15 IQ points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

B. 12.03 Schizophrenic, Paranoid and Other Psychotic Disorders

☐ Psychotic features and deterioration that are persistent (continuous or intermittent), as evidenced by at least one of the following:

1. ☐ Delusions or hallucinations
2. ☐ Catatonic or other grossly disorganized behavior
3. ☐ Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
   a. ☐ Blunt affect, or
   b. ☐ Flat affect, or
   c. ☐ Inappropriate affect
4. ☐ Emotional withdrawal and/or isolation

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

C. 12.04 Affective Disorders

☐ Disturbance of mood, accompanied by a full or partial manic or depressive syndrome, as evidenced by at least one of the following:

1. ☐ Depressive syndrome characterized by at least four of the following:
   - a. ☐ Anhedonia or pervasive loss of interest in almost all activities, or
   - b. ☐ Appetite disturbance with change in weight, or
   - c. ☐ Sleep disturbance, or
   - d. ☐ Psychomotor agitation or retardation, or
   - e. ☐ Decreased energy, or
   - f. ☐ Feelings of guilt or worthlessness, or
   - g. ☐ Difficulty concentrating or thinking, or
   - h. ☐ Thoughts of suicide, or
   - i. ☐ Hallucinations, delusions or paranoid thinking
2. ☐ Manic syndrome characterized by at least three of the following:
   - a. ☐ Hyperactivity, or
   - b. ☐ Pressures of speech, or
   - c. ☐ Flight of ideas, or
   - d. ☐ Inflated self-esteem, or
   - e. ☐ Decreased need for sleep, or
   - f. ☐ Easy distractibility, or
   - g. ☐ Involvement in activities that have a high probability of painful consequences which are not recognized, or
   - h. ☐ Hallucinations, delusions or paranoid thinking
3. ☐ Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment (explain in Part IV, Consultant's Notes, if necessary):

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

D. 12.05 Mental Retardation

☐ Significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22, with one of the following:

1. ☐ Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow instructions such that the use of standardized measures of intellectual functioning is precluded*
2. ☐ A valid verbal, performance, or full scale IQ of 59 or less*
3. ☐ A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function*
4. ☐ A valid verbal, performance, or full scale IQ of 60 through 70*

☒ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder Learning Disorder, borderline intellectual functioning

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

*NOTE: Items 1, 2, 3, and 4 correspond to listings 12.05A, 12.05B, 12.05C, and 12.05D, respectively.

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

E. 12.06 Anxiety-Related Disorders

☐ Anxiety as the predominant disturbance or anxiety experienced in the attempt to master symptoms, as evidenced by at least one of the following:

1. ☐ Generalized persistent anxiety accompanied by three of the following:
   - a. ☐ Motor tension, or
   - b. ☐ Autonomic hyperactivity, or
   - c. ☐ Apprehensive expectation,
   - d. ☐ Vigilance and scanning
2. ☐ A persistent irrational fear of a specific object, activity or situation which results in a compelling desire to avoid the dreaded object, activity, or situation
3. ☐ Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror, and sense of impending doom occurring on the average of at least once a week
4. ☐ Recurrent obsessions or compulsions which are a source of marked distress
5. ☐ Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

F. 12.07 Somatoform Disorders

☐ Physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms, as evidenced by at least one of the following:

1. ☐ A history of multiple physical symptoms of several years duration beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly

2. ☐ Persistent nonorganic disturbance of one of the following:

   a. ☐ Vision, or

   b. ☐ Speech, or

   c. ☐ Hearing, or

   d. ☐ Use of a limb, or

   e. ☐ Movement and its control (e.g., coordination disturbances, psychogenic seizures, akinesia, dyskinesia), or

   f. ☐ Sensation (e.g., diminished or heightened)

3. ☐ Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

G. 12.08 Personality Disorders

☐ Inflexible and maladaptive personality traits which cause either significant impairment in social or occupational functioning or subjective distress, as evidenced by at least one of the following:

1. ☐ Seclusiveness or autistic thinking
2. ☐ Pathologically inappropriate suspiciousness or hostility
3. ☐ Oddities of thought, perception, speech and behavior
4. ☐ Persistent disturbances of mood or affect
5. ☐ Pathological dependence, passivity, or aggressivity
6. ☐ Intense and unstable interpersonal relationships and impulsive and damaging behavior

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

H. 12.09 Substance Addiction Disorders

☐ Behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.

If present, evaluate under one or more of the most closely applicable listings:

1. ☐ Listing 12.02-Organic mental disorders*
2. ☐ Listing 12.04-Affective disorders*
3. ☐ Listing 12.06-Anxiety-related disorders*
4. ☐ Listing 12.08-Personality disorders*
5. ☐ Listing 11.14-Peripheral neuropathies*
6. ☐ Listing 5.05-Liver damage*
7. ☐ Listing 5.04-Gastritis*
8. ☐ Listing 5.08-Pancreatitis*
9. ☐ Listing 11.02 or 11.03-Seizures*

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

*NOTE: Items 1,2,3,4,5,6,7,8, and 9 correspond to listings 12.09A, 12.09B, 12.09C, 12.09D, 12.09E, 12.09F, 12.09G, 12.09H, and 12.09I, respectively. If items 1, 2, 3, or 4 are checked, only the numbered items in subsections IIA, IIC, IIE, or IIG of the form need be checked. The first block under the disorder heading in those subsections should not be checked, unless the evidence substantiates the presence of the disorder separate from the substance addiction disorder.

I. 12.10 Autistic Disorder and Other Pervasive Developmental Disorders

☐ Qualitative deficits in the development of reciprocal social interaction, in the development of verbal and nonverbal communication skills, and in imaginative activity. Often there is a markedly restricted repertoire of activities and interests, which frequently are stereotyped and repetitive.

1. ☐ Autistic disorder, with medically documented findings of all of the following:
   - a. ☐ Qualitative deficits in reciprocal social interaction
   - b. ☐ Qualitative deficits in verbal and nonverbal communication and in imaginative activity
   - c. ☐ Markedly restricted repertoire of activities and interests
2. ☐ Other pervasive developmental disorders, with medically documented findings of both of the following:
   - a. ☐ Qualitative deficits in reciprocal social interaction
   - b. ☐ Qualitative deficits in verbal and nonverbal communication and in imaginative activity

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder _____

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

III. RATING OF FUNCTIONAL LIMITATIONS

A. "B" Criteria of the Listings

Indicate to what degree the following functional limitations (which are found in paragraph B of listings 12.02-12.04, 12.06-12.08 and 12.10 and paragraph D of 12.05) exist as a result of the individual's mental disorder(s).

NOTE: Item 4 below is more than a measure of frequency and duration. See 12.00C4 and also read carefully the instructions for this section.

Specify the listing(s) (i.e., 12.02 through 12.10) under which the items below are being rated 12.05

FUNCTIONAL LIMITATION	DEGREE OF LIMITATION					
	None	Mild	Moderate	Marked*	Extreme*	Insufficient Evidence
1. Restriction of Activities of Daily Living	☐	☒	☐	☐	☐	☐
	None	Mild	Moderate	Marked*	Extreme*	Insufficient Evidence
2. Difficulties in Maintaining Social Functioning	☐	☐	☒	☐	☐	☐
	None	Mild	Moderate	Marked*	Extreme*	Insufficient Evidence
3. Difficulties in Maintaining Concentration, Persistence, or Pace	☐	☐	☒	☐	☐	☐
	None		One or Two	Three*	Four* or More	Insufficient Evidence
4. Episodes of Decompensation, Each of Extended Duration	☒		☐	☐	☐	☐

*Degree of limitation that satisfies the functional criterion.

B. "C" Criteria of the Listings

1. Complete this section if 12.02 (Organic Mental), 12.03 (Schizophrenic, etc.), or 12.04 (Affective) applies and the requirements in paragraph B of the appropriate listing are not satisfied.

NOTE: Item 1 below is more than a measure of frequency and duration. See 12.00C4 and also read carefully the instructions for this section.

☐ Medically documented history of a chronic organic mental (12.02), schizophrenic, etc. (12.03), or affective (12.04) disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do any basic work activity, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. ☐ Repeated episodes of decompensation, each of extended duration

2. ☐ A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate

3. ☐ Current history of 1 or more years' inability to function outside a highly supportive living arrangement with an indication of continued need for such an arrangement.

☐ Evidence does not establish the presence of the "C" criteria

☐ Insufficient evidence to establish the presence of the "C" criteria (explain in Part IV, Consultant's Notes).

2. Complete this section if 12.06 (Anxiety-Related) applies and the requirements in paragraph B of listing 12.06 are not satisfied.

☐ Complete inability to function independently outside the area of one's home

☐ Evidence does not establish the presence of the "C" criterion

☐ Insufficient evidence to establish the presence of the "C" criterion (explain in Part IV, Consultant's Notes).

IV. CONSULTANT'S NOTES

26 years old alleges poor reading, spelling, developmental delay and learning disorder. No known mental Health treatment past or current. Ce exam shows verbal scores of 66, performance of 78 and full scale of 69. Claimant retain ability to do simple work.

Section 223 and section 1633 of the Social Security Act authorize the information requested on this form. The information provided will be used in making a decision on this claim. Completion of this form is mandatory in disability claims involving mental impairments. Failure to complete this form may result in a delay in processing the claim. Information furnished on this form may be disclosed by the Social Security Administration to another person or governmental agency only with respect to Social Security programs and to comply with federal laws requiring the exchange of information between Social Security and another agency.

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about these and other reasons why information about you may be used or given out are available in Social Security offices. If you want to learn more about this, contact any Social Security office.

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 U. S.C. § 3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 15 minutes to read the instructions, gather the facts, and answer the questions. **SEND OR BRING THE COMPLETED FORM TO YOUR LOCALSOCIALSECURITY OFFICE. To find the nearest office, call 1-800-772-1213.** *Send only comments on our time estimate above to: SSA, 6401 Security Boulevard, Baltimore, MD 21235-6401.*

PSYCHOLOGICAL EVALUATION

NAME: [redacted]
DATE OF BIRTH: [redacted]
AGE: 26 years
AN: [redacted]
DATE OF TESTING: [redacted]
DATED OF REPORT: [redacted]

Today's testing and interview respondent was referred by the Disability Determination Division of the Oklahoma Department of Rehabilitation Services. The Wechsler Adult Intelligence Scale-Third Edition (WAIS III) testing and brief mental status exam interview were conducted on an outpatient basis in a private office environment. The claimant came alone to the interview. She drove but she got lost.

The claimant is a 26-year-old [redacted] female. She was short in stature and obese in build. She is pregnant and her baby is due the end of October. Her grooming was below average. Dress was soiled. Posture was unremarkable. Gait was typical. Motor behavior was restless and fidgety. Ambulation was unassisted. The informant was the claimant.

The claimant completed the 12th grade in high school. She was in special education classes all through school. She has never been married. She lives with her four children. She does not currently have a job. She last worked at a [redacted] for less than one week. The job ended because she was told she wasn't fit for the job.

Physical and medical problems include hypertension. She is also currently pregnant. She is supposed to take medication for hypertension but she doesn't.

Mental and emotional problems are described by her mother as being crazy and retarded. She does not use alcohol or drugs. She was in trouble with the police when she and a friend were accused of shoplifting. She thought the friend was going to pay for the merchandise. She can't get along with her brother and has tried to hurt him.

She was able to correctly write her name, age and today's date. Her speech was fully comprehensible.

Affect and behavior were observed to be fairly talkative, fidgety and serious. She was cooperative with the examiner. Attention was focused. Effort and motivation were good. Results are interpreted as being valid. Observations of adaptive behavior and interpersonal style suggest a level of functioning that is consistent with the obtained IQ score.

The claimant is judged to be incapable of handling any awarded benefits in a responsible manner.

Permanent Subcommittee on Investigations
EXHIBIT #5c

The claimant's current level of intellectual functioning was at the top of the EXTREMELY LOW range, as reflected by a Full Scale IQ score of 69 on the WAIS-III. The Verbal IQ score of 66 was in the EXTREMELY LOW range. The Performance (Visual-Motor) IQ score of 78 was in the BORDERLINE range. There was a not quite significant difference of twelve points between the Verbal and Performance IQ scores. Subtest scores ranged from 3 to 9, slightly above the average range of variability.

DSM IV Diagnosis

Axis I: Learning Disorder NOS
Axis II: None
Axis III: Hypertension, Pregnancy
Axis IV: Occupational; Familial
Axis V: GAF = 45

Health Service Psychologist (Clinical)
[redacted]

Social Security Administration SSA-4268

EXPLANATION OF DETERMINATION

NAME OF CLAIMANT	W/E's NAME (IF CDB or DWB)	SSN	CLAIM TYPE
[redacted]		[redacted]	**DI**

26 years old alleges poor reading and spelling skills, developmental delay and learning disorder. Claimant received a Mental PRTF and MRFC assessment for simple work.

[redacted]

[redacted] [redacted]

Permanent Subcommittee on Investigations
EXHIBIT #5d

(The following is a transcript in the hearing held before Ralph L. Wampler, Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, on May 13, 2008, at Oklahoma City, Oklahoma, in the case of [redacted] Social Security Number [redacted] The Claimant appeared in person and was represented by [redacted] Also present was [redacted] Medical Expert.)

(The hearing commenced at 8:38 a.m. on May 13, 2008.)

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

ALJ: We'll go on the record.

HA: We're on the record.

ALJ: [redacted], as you know, we're under a short timeframe, so what --

ATTY: Yes, sir.

ALJ: The documents here in the file have been marked for identification as Exhibits 1A through 7F. I propose to receive these into evidence. Any objections to their admission?

ATTY: No objections, Your Honor.

ALJ: Let the record show that Exhibits 1A through 7F are received into evidence.

(Exhibits 1A through 7F, previously identified, were received into evidence and made a part of the record thereof).

ALJ: Thank you. [redacted] I'm going to take the medical expert's testimony first and see where we are in this case.

ATTY: That's fine, Your Honor.

(The Medical Expert, [redacted], having been first duly sworn, testified as follows:)

EXAMINATION OF MEDICAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q [redacted] state your name and occupation, please.

A [redacted] (Phonetic). I'm a licensed clinical psychologist.

Permanent Subcommittee on Investigations
EXHIBIT #5e

Q And you've been furnished with a copy of the medical documents, have you not?

A Yes, I have.

Q What do those documents show the Claimant suffers from?

A This individual has a diagnosis of mild mental retardation and a diagnosis of a learning disorder. It's my opinion that she meets 12.05.

Q 12.05. Okay. Now, can you address the B criteria (Phonetic)?

A Yes, Your Honor. In restrictions of daily, daily living activities, I believe there's a mild restriction.

Q Uh-huh.

A In maintaining social functioning, I believe there is a moderate limitation.

Q Uh-huh.

A In maintaining concentration, persistence, or pace, there's a marked to extreme restriction.

Q Okay. And then episodes of deterioration?

A I don't have -- Your Honor, she's living in a pretty restricted environment --

Q Uh-huh.

A -- and, and not doing things that are, are causing these to occur and I don't have any -- I have very limited documentation, actually, but I don't have documentation.

Q Okay.

A So, I'd just say I don't have enough information.

Q Now, she alleges that she became disabled May 1st of 2004.

Was she at that level of severity at that time?

A Yes, Your Honor. This is has been a lifelong issue.

Q Okay. Would you recommend a payee?

A Yes, I would.

Q Okay.

ALJ: [redacted] I don't see a need of going any further unless there's something you want to call to my attention.

ATTY: No, Your Honor. I'm happy.

ALJ: All right. I'll take the matter under advisement. The hearing is closed at 20 -- 19 minutes till 9:00. Thank you, and you all are excused.

CLMT: Thank you.

(The hearing closed at 8:41 a.m. on May 13, 2008.)

C E R T I F I C A T I O N

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded at the hearing held in the case of [redacted] before Administrative Law Judge Ralph L. Wampler.

Karen Galvez/cmc
Karen M. Galvez, Transcriber
Free State Reporting, Inc.

Caroline Musterman/cmc
Caroline Musterman, Proofreader
Free State Reporting, Inc.

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability, Disability Insurance Benefits, and Supplemental Security Income
(Wage Earner)	[redacted] (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before the undersigned on a request for hearing dated [redacted]. The claimant appeared and testified at a hearing held on [redacted] in Oklahoma City, OK. [redacted], an impartial medical expert, also appeared at the hearing. The claimant is represented by [redacted] an attorney.

The claimant is alleging disability since May 1, 2004.

The decision on the claimant's prior Title II application filed on [redacted] is being reopened and revised. The initial determination on the prior Title II application was issued within 4 years of the filing date of the current applications and good cause for reopening is established. New and material evidence has been submitted (20 CFR 404.988 *et seq.*). The decision on the prior Title XVI application has not been reopened because the current applications were not filed within 2 years of the notice of initial determination (20 CFR 416.1488 *et seq.*).

ISSUES

The issue is whether the claimant is disabled under sections 216(i), 223(d) and 1614(a)(3)(A) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

With respect to the claim for a period of disability and disability insurance benefits, there is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through March 31, 2005. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

Permanent Subcommittee on Investigations
EXHIBIT #5f

After careful review of the entire record, the undersigned finds that the claimant has been disabled from May 1, 2004 through the date of this decision. The undersigned also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f) and 416.920(f)). If the claimant has the residual functional capacity to do her past relevant work,

See Next Page

the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)); the undersigned must determine whether the claimant is able to do any other work considering her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, she is not disabled. If the claimant is not able to do other work and meets the duration requirement, she is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g), 404.1560(c), 416.912(g) and 416.960(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. The claimant's date last insured is March 31, 2005.

2. The claimant has not engaged in substantial gainful activity since May 1, 2004, the alleged onset date (20 CFR 404.1520(b), 404.1571 *et seq.*, 416.920(b) and 416.971 *et seq.*).

3. The claimant has the following severe impairment(s): mental retardation (20 CFR 404.1520(c) and 416.920(c)).

4. The severity of the claimant's mental retardation meets the criteria of section(s) 12.05 of 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d) and 416.920(d)).

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and 416.929 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and 416.927 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

A psychological evaluation was performed [redacted] and is shown below:

See Next Page

Today's testing and interview respondent was referred by the Disability Determination Division of the Oklahoma Department of Rehabilitation Services. The Wechsler Adult Intelligence Scale-Third Edition (WAIS III) testing and brief mental status exam interview were conducted on an outpatient basis in a private office environment. The claimant came alone to the interview. She drove but she got lost.

The claimant is a 26-year-old [redacted] female. She was short in stature and obese in build. She is pregnant and her baby is due the end of October. Her grooming was below average. Dress was soiled. Posture was unremarkable. Gait was typical. Motor behavior was restless and fidgety. Ambulation was unassisted. The informant was the claimant.

The claimant completed the 12th grade in high school. She was in special education classes all through school. She has never been married. She lives with her four children. She does not currently have a job. She last worked at a [redacted] for less than one week. The job ended because she was told she wasn't fit for the job.

Physical and medical problems include hypertension. She is also currently pregnant. She is supposed to take medication for hypertension but she doesn't.

Mental and emotional problems are described by her mother as being crazy and retarded. She does not use alcohol or drugs. She was in trouble with the police when she and a friend were accused of shoplifting. She thought the friend was going to pay for the merchandise. She can't get along with her brother and has tried to hurt him.

She was able to correctly write her name, age and today's date. Her speech was fully comprehensible.

Affect and behavior were observed to be fairly talkative, fidgety and serious. She was cooperative with the examiner. Attention was focused. Effort and motivation were good. Results are interpreted as being valid. Observations of adaptive behavior and interpersonal style suggest a level of functioning that is consistent with the obtained IQ score.

The claimant is judged to be incapable of handling any awarded benefits in a responsible manner.

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The claimant's current level of intellectual functioning was at the top of the EXTREMELY LOW range, as reflected by a Full Scale IQ score of 69 on the WAIS-III. The Verbal IQ score of 66 was in the EXTREMELY LOW range. The Performance (Visual-Motor) IQ score of 78 was in the BORDERLINE range. There was a not quite significant difference of twelve points between the Verbal and Performance IQ scores. Subtest scores ranged from 3 to 9, slightly above the average range of variability.

DSM IV Diagnosis

Axis I: Learning Disorder NOS
Axis II: None
Axis III: Hypertension, Pregnancy
Axis IV: Occupational; Familial
Axis V: GAF = 45

Health Service Psychologist (Clinical)
[redacted]

Name of Patient: [redacted] JKA/02

CAPABILITY OPINION

In your opinion is the patient able to manage benefit payments in his/her own interest?

YES _____ NO X

Remarks:

See Next Page

	Not Significantly Limited	Moderately Limited	Markedly Limited	No Evidence of Limitation in this Category	Not Ratable on Available Evidence
A. UNDERSTANDING AND MEMORY					
1. The ability to remember locations and work-like procedures.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
2. The ability to understand and remember very short and simple instructions.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
3. The ability to understand and remember detailed instructions.	1. ☐	2. ☐	3. ☒	4. ☐	5. ☐
B. SUSTAINED CONCENTRATION AND PERSISTENCE					
4. The ability to carry out very short and simple instructions.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
5. The ability to carry out detailed instruc-	1. ☐	2. ☐	3. ☒	4. ☐	5. ☐

[redacted] testified at the hearing that the claimant's impairment has met the criteria of Listing 12.05C all of her life. The evidence shows that the claimant was in special education, has a verbal IQ of 66, a learning disorder, and a GAF of 45. The undersigned concurs with [redacted] assessment.

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairment(s) could reasonably be expected to produce the alleged symptoms, and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The State agency medical opinions are given little weight because evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants. Furthermore, the State agency consultants did not adequately consider the claimant's subjective complaints or the combined effect of the claimant's impairments.

5. The claimant has been under a disability, as defined in the Social Security Act, from May 1, 2004 through at least the date of this decision (20 CFR 404.1520(d) and 416.920(d)).

DECISION

Based on the application for a period of disability and disability insurance benefits filed on [redacted], the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act beginning on May 1, 2004.

Based on the application for supplemental security income protectively filed on [redacted] the claimant has been disabled under section 1614(a)(3)(A) of the Social Security Act beginning on May 1, 2004.

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The component of the Social Security Administration responsible for authorizing supplemental security income will advise the claimant regarding the nondisability requirements for these payments, and if eligible, the amount and the months for which payment will be made.

A determination to appoint a representative payee to manage payments in the claimant's interest is recommended.

Ralph L Wampler
U.S.Administrative Law Judge

RLW/DAW

[redacted]
Date

SOCIAL SECURITY ADMINISTRATION

Refer To: [redacted]

Office of Disability Adjudication and Review
301 Nw 6th St
3rd Floor West
Oklahoma City, OK 73102

Date:
APR 2 5 [illegible] APR 2 5 2008

[redacted]

NOTICE OF DECISION - FULLY FAVORABLE

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

This Decision is Fully Favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

The Appeals Council May Review The Decision On Its Own

The Appeals Council may decide to review my decision even though you do not ask it to do so. To do that, the Council must mail you a notice about its review within 60 days from the date shown above. Review at the Council's own motion could make the decision less favorable or unfavorable to you.

If You Disagree With The Decision

If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeals Council.

How to File an Appeal

To file an appeal you or your representative must request that the Appeals Council review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the **Appeals Council, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22041-3255**. Please put the Social Security number shown above on any appeal you file.

Permanent Subcommittee on Investigations
EXHIBIT #6a

Time to File an Appeal

To file an appeal, you must file your request for review **within 60 days** from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time to Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider **with** your request for review.

How an Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J).

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The Council may review your case for any reason. It **will** review your case if one of the reasons for review listed in our regulation exists. Section 404.970 of the regulation lists these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

If No Appeal and No Appeals Council Review

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

See Next Page

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (405)605-3000. Its address is Social Security, 2615 Villa Prom, Shepherd Mall, Oklahoma City, OK 73107.

Lance K. Hiltbrand
U.S. Administrative Law Judge

cc:

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability and Disability Insurance Benefits
(Wage Earner)	[redacted] (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before the Administrative Law Judge on a request for hearing dated January 12, 2007. The claimant appeared and testified at a hearing held on March 20, 2008, in Oklahoma City, Oklahoma. [redacted] an impartial vocational expert, also appeared at the hearing. The claimant is represented by L [redacted] an attorney.

The claimant has amended the alleged onset date of disability to January 1, 2007, on advice of counsel (Hearing Testimony).

ISSUES

The issue is whether the claimant is disabled under sections 216(i) and 223(d) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

There is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2009. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful review of the entire record, the Administrative Law Judge finds that the claimant has been disabled from January 1, 2007 through the date of this decision. The Administrative Law Judge also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is

See Next Page

disabled (20 CFR 404.1520(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e)). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the Administrative Law Judge must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e) and 404.1545; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f)). If the claimant has the residual functional capacity to do her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, she is not disabled. If the claimant is not able to do other work and meets the duration requirement, she is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is

See Next Page

not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g) and 404.1560(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the Administrative Law Judge makes the following findings:

1. The claimant's date last insured is December 31, 2009.

2. The claimant has not engaged in substantial gainful activity since January 1, 2007, the amended alleged onset date (20 CFR 404.1520(b) and 404.1571 *et seq.*).

3. The claimant has the following severe impairments: status post right rotator cuff repair times two with postoperative pain in the right shoulder, neck, arm, and elbow; and cervical degenerative disc disease (20 CFR 404.1520(c)).

The above impairments cause significant limitation in the claimant's ability to perform basic work activities.

4. The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d)).

5. After careful consideration of the entire record, the Administrative Law Judge finds that the claimant has the residual functional capacity to perform light work as defined in 20 CFR 404.1567(b). She can occasionally lift and/or carry 20 pounds and frequently lift and/or carry 10 pounds. She can stand and/or walk (with normal breaks) about 6 hours of an 8-hour workday and sit (with normal breaks) 6 hours of an 8-hour workday. Her residual functional capacity for light work is diminished by significant nonexertional limitations, in that she has postural limitations of occasionally climbing, balancing, stooping, kneeling, crouching, and crawling. She is limited in the right hand and arm as to grasping and fingering in any work-related activities. She must avoid all concentrated exposure to unprotected heights and dangerous moving machinery. Additionally, she has a moderate to severe level of pain and fatigue affecting her ability to work in a competitive environment.

In making this finding, the Administrative Law Judge considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The Administrative Law Judge has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

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The claimant's statements concerning her impairments and their impact on her ability to work are generally credible in light of the medical history, the reports of the treating and examining practitioners, the findings made on examination, her description of her activities and lifestyle, and the claimant's demeanor at hearing. The Administrative Law Judge finds that the claimant has an impairment that is reasonably expected to produce the type of pain and other symptomatology she alleges. The claimant testified she has an 11th grade education. The claimant stated that she is unable to work due to chronic pain in her right shoulder, arm, hand, and neck. She stated that her pain continues to get worse even though her physician has increased her pain medication. She testified that she has a TENS unit on her arm for pain. Her medication causes severe headaches and dizziness. The claimant denied most activities at the hearing and expressed frustration at her limited activities.

The medical evidence reflects that the claimant was injured on the job while working as on November 29, 2003. The claimant was seen by Dr. and had an MRI scan of the shoulder in June of 2004. The study showed a complete tear of the rotator cuff. Dr. recommended surgery for rotator cuff repair as well as a subacromial decompression (Exhibit 10F).

In July of 2004, the claimant underwent a surgical procedure on the right shoulder and had a repair of the rotator cuff, a subacromial decompression, and a resection of the ligament (Exhibit 3F). Postoperatively, she had complaints of pain in her right arm, forearm and thumb. In August of 2004, the claimant was treated with physical therapy and placed on Bextra (Exhibit 9F). She continued to complain of the radiating pain down into the forearm and hand. She also complained of pain in the right side of the neck. The claimant stated that she had difficulty trying to lift, twist, push, or pull (Exhibit 2F).

The claimant continued to have chronic pain and limited mobility of her right shoulder and developed adhesive capsulitis. The claimant was evaluated by Dr. in January of 2005, who recommended an EMG study. In November of 2005, it was noted that the EMG study within normal limits (Exhibits 7F, 10F, and 18F).

The claimant continued to have difficulty with some crepitation and pain. The claimant underwent a second arthroscopically assisted open repair of the rotator cuff in March of 2005. Surgery revealed a recurrent tear in the rotator cuff (Exhibit 3F). Postoperatively, the claimant received physical therapy, but continued to have pain in the shoulder, the neck, the arm, the forearm, and the hand. Physical therapy was discontinued in June of 2005 after it was noted to irritate the claimant's symptoms. A report dated July 27, 2005, noted residual nerve pain around the extremity and the supraclavicular neck area radiating down the forearm and into the median nerve distribution. This included the thumb, index, and long finger consistent with cervical radicular distribution (Exhibit 11F).

The claimant was re-evaluated by Dr. on November 3, 2005. The claimant had a MRI scan of the cervical spine that showed some degenerative changes at C4-5, C5-6, and C6-7. The scan revealed bulging discs with central stenosis (Exhibit 15F). A bone scan in December of 2005 showed mild increased uptake noted around the right shoulder which could be attributed to

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post surgery. In January of 2006, the claimant was sent to physical therapy and was prescribed Gabitril. The claimant also underwent stellate ganglion blocks without benefit (Exhibit 7F).

A MRI of the right elbow on May 19, 2006, showed slight degenerative changes at the ulnar joint with mild tendinopathy of the common extensor tendon (Exhibit 8F). A MRI of the right shoulder on May 19, 2006, showed chondromalacia of the superior portion of the joint and degenerative tearing of the glenoid labrum (Exhibit 15F). In May of 2006, it was noted that the EMG study was non-diagnostic for radial tunnel syndrome (Exhibit 7F).

On October 23, 2006, the claimant was evaluated by [redacted], in connection with her workers compensation claim. The claimant continued to complain of pain and weakness in the shoulder, forearm, elbow, and hand. Upon examination, tenderness was present in the brachium, olecranon, and epicondyle. Scarring consistent with surgery was noted with some atrophy. Tenderness was present about the shoulder with some crepitation. Mild tenderness was present in the wrist. [redacted]med that the claimant was temporarily totally disabled and in need of additional medical treatment. He stated that the claimant should be evaluated for pain management on an ongoing basis (Exhibit 20F).

The claimant was referred to [redacted]., in January of 2007 for pain management. [redacted] placed her on Relafen, Zanaflex, Lyrica, and Ultram. [redacted] also prescribed a TENS unit. The claimant was seen several times in follow-up by [redacted] and had her medication regimen changed and altered during her course of therapy. [redacted] prescribed Nabumetone, Lyrica, Lortab, and Tizanidine. [redacted] also prescribed a strict home exercise program (Exhibits 14F and 21F).

On September 13, 2007, the claimant was seen by [redacted]., in connection with her workers compensation claim. It was noted that the claimant continued to have chronic pain in her neck, right arm, shoulder, and hand. The claimant was unable to reach behind her back or lie on her shoulder. Upon examination, the right shoulder had surgical scars. There was limited flexion in the shoulder to 110 degrees, abduction 80 degrees, extension 15 degrees, adduction 15 degrees, external rotation 50 degrees, and internal rotation 30 degrees. There was tenderness to palpation of the shoulder and the shoulder was weak. Physical examination of the cervical spine revealed flexion 25 degrees, extension 20 degrees, right/left lateral flexion 15 degrees, right rotation 30 degrees, and left rotation 40 degrees. There was tenderness to palpitation of the paraspinous and trapezius muscles bilaterally. [redacted]pined that the claimant had sustained permanent and total economic disability for the performance of ordinary manual labor or for any job for which she was qualified by reason of past work experience. He stated that if she was not vocationally retrained, then she would be permanently and totally disabled. [redacted] stated that the claimant would require continued pain management (Exhibit 17F).

On October 4, 2007, [redacted] added an addendum to his report. He stated that the claimant's right arm pain was of sufficient severity that RSD was considered as being a cause. [redacted] stated that RDS was ruled out, but that the claimant may have sympathetically mediated pain syndrome. He also noted the claimant had degenerative and bulging discs in her cervical spine. He recommended that the claimant undergo a discogram (Exhibit 17F).

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On January 23, 2008, the claimant was evaluated by [redacted] D. [redacted] recommended an updated MRI of her cervical spine (Exhibit 22F).

After considering the evidence of record, the Administrative Law Judge finds that the claimant's medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

On April 20, 2005, the claimant was released to return to light duty work with a 25 pound lifting restriction. It was also recommended that the claimant go to pain management (Exhibit 10F, page 32). On July 6, 2005, the claimant was released to return to light duty work with a 25 pound lifting restriction, restricted reaching, and no repetitive movements with the right hand. It was also recommended that the claimant go to pain management (Exhibit 10F, page 32). Subsequently on July 27, 2006, the claimant was released to return to light duty work with a 10 pound lifting restriction and no repetitive movements with the right hand. It was also recommended that the claimant go to pain management (Exhibit 10F, page 33). The Administrative Law Judge considered these opinions, but gave them slight weight since they were related to the times of claimant's surgeries. Light work was the most recent status in the record, and the Administrative Law Judge found this was consistent with the medical evidence of record (Exhibit 10F). The Administrative Law Judge included this in the residual functional capacity assessment.

The Administrative Law Judge considered the opinion of the treating physician, [redacted] 's assessment was that the claimant had multi-level cervical discogenic syndrome with right upper radicular pain. He noted that the claimant needed pain management in the form of maintenance to manage her episodes of severe pain (Exhibit 21F). The Administrative Law Judge considered [redacted] s opinion and assigned it full weight since it was consistent with the evidence of record. The State agency medical opinions are given little weight because [redacted] opinion is more consistent with the record as a whole and evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants. Furthermore, the State agency consultants did not adequately consider the claimant's subjective complaints.

The objective medical evidence of record since January 1, 2007, support the claimant's allegations generally, and more specifically support the existence of the limitations reported. The Administrative Law Judge is persuaded that after considering the claimant's complaints of pain, it is reasonable to conclude that she is limited to the exertional requirements of no more than light work activity, with the additional nonexertional limitations cited above. Moreover, the Administrative Law Judge is persuaded that secondary to chronic pain, the claimant suffers from a moderate to severe level of pain and fatigue affecting her ability to perform in a competitive work environment.

6. The claimant is unable to perform any past relevant work (20 CFR 404.1565).

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The vocational expert testified that the claimant's past relevant work is classified in the Dictionary of Occupational Titles (DOT) as a cake decorator, skilled work (SVP of 6), and is described as light work in the DOT, and medium work as actually performed; counter sales and hand packaging, described as light, semi-skilled work (SVP of 3); and an accountant, described as sedentary, and skilled work (SVP of 8). At the hearing, the vocational expert responded to hypothetical questions of the Administrative Law Judge. She testified that based upon the claimant's residual functional capacity, the demands of the claimant's past relevant work exceed the residual functional capacity. Accordingly, the Administrative Law Judge finds that the claimant is unable to perform any past relevant work.

7. The claimant was a younger individual age 18-49 on the established disability onset date (20 CFR 404.1563).

8. The claimant has a limited education and is able to communicate in English (20 CFR 404.1564).

9. The claimant's acquired job skills do not transfer to other occupations within the residual functional capacity defined above (20 CFR 404.1568).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c) and 404.1566).

In determining whether a successful adjustment to other work can be made, the Administrative Law Judge must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11). When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decisionmaking unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If the claimant has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decisionmaking (SSR 85-15).

If the claimant had the residual functional capacity to perform the full range of light work, a finding of "not disabled" would be directed by rule 202.18. However, the claimant's ability to perform all or substantially all of the requirements of this level of work has been impeded by additional limitations. To determine the extent to which these limitations erode the unskilled light occupational base, the Administrative Law Judge asked the vocational expert whether jobs exist in the national economy for an individual with the claimant's age, education, work experience and residual functional capacity. The vocational expert testified that given all of these factors there are no jobs in the national economy that the individual could perform.

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Oklahoma City, Oklahoma 73103

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American Board of Independent Medical Examiners
American College of Occupational Environmental Medicine
American Osteopathic College of Occupational and Preventive Medicine
American College of Osteopathic Family Physicians
American Academy of Disability Evaluating Physicians

October 24, 2007

R

RE: Claimant:
Insured:
Claim Number:
D/Injury: November 29, 2003

Dear

The above person was re-examined in the office today. She has previously been examined in this office on October 25, 2004, for the evaluation of injuries which she stated occurred on November 29, 2003, while working for in Edmond, as a The history was given by the claimant. She stated at approximately noon, she was standing on a two (2) to three (3) step stepladder. She stated she was on the second step stocking boxes of She stated she was on the last box and she shoved and pushed it with her right hand over her head and she felt a "pulling sensation" in her right arm to her right shoulder. She stated she completed her shift and she reported this injury to her supervisor. She stated she continued working through May 11, 2004. She denied seeking medical treatment and she continued working. She stated she thought she had just pulled a muscle in her right shoulder. She stated she continued lifting boxes and buckets of icing, weighing forty (40) pounds, which made the pain in her right shoulder worse. She stated she was examined by in Edmond, on her own, on May 11, 2004, for examination of her right shoulder and he also sent her to an eye physician for blurring of her left eye. She stated laboratory testing was performed on May 12, 2004, and she was sent for x-rays of her right shoulder at a different facility which were obtained on

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a different day. She stated Vioxx, Flexeril, and another medication, the name of which she cannot recall, were prescribed and she was taken off work for one and one-half (1 1/2) weeks. She stated she was told the laboratory testing was normal but she does not know the results of the x-rays. She stated she remained off work. She stated she followed up with I ——— on May 14, 2004, and she was referred to ——— in Edmond, and she was continued off work through May 20, 2004. She stated she remained off work. She stated she returned to work on May 21, 2004, and she worked through May 24, 2004, and she took a leave absence so she could find out what was wrong with her right shoulder. She stated she returned to ——— on May 25, 2004, and she was continued off work and medications were prescribed. She stated she remained off work.

She stated on a date she cannot recall, she was examined by ——— and x-rays were obtained of her right shoulder but she does not know the results. She stated an MRI of her right shoulder was recommended and she was continued off work. She stated she cannot recall if medications were prescribed. She stated on June 8, 2004, an MRI of her right shoulder was performed at TPG MRI North in Oklahoma City. She stated she returned to I ——— on June 14, 2004, and the MRI was reviewed and she was told she had a torn rotator cuff. She stated surgery was recommended to her right shoulder and she was continued off work. She stated on July 20, 2004, outpatient surgery was performed to her right shoulder by I ———r at the North Surgery Center in Oklahoma City. She stated she was released from the hospital and her right arm was placed in a sling and medications were prescribed and she was continued off work. She stated she followed up with ———r one (1) week after surgery and then weekly due to pain in her right thumb. She stated a Medrol Dose Pak was prescribed and she was continued off work. She stated she had no improvement with her right thumb with the Medrol Dose Pak and no improvement with the surgery to her right shoulder. She stated she returned to D ——— and Neurontin was prescribed, which kept the pain down in her right thumb, right index finger, right long finger, and right forearm. She stated she had been having these symptoms since July 20, 2004, after she received a nerve block in her neck. She stated I ———r recommended physical therapy. She stated on August 12, 2004, she began physical therapy to her right shoulder at Metro Hand Rehabilitation three (3) times a week to the present, consisting of heat and ice daily, ultrasound, different exercises, and pulling exercises, with improvement. She stated she is able to move her right arm further. She states she has no relief of the pain in the fingers of her right hand or her right forearm. She stated the Neurontin is helping with the pain. She stated on October 14, 2004, she was released to return to work by I ———r on light duty with no use of her right upper extremity. She stated she did not return to work because her employer would not allow her to return to work because they needed a release and she then took family medical leave. She stated her last appointment with ———r was October 18, 2004, and she was continued in physical therapy. She stated she was told her right shoulder was frozen by ———and he recommended manipulation under anesthesia but this has not been scheduled. She stated she was off work because [redacted] will not allow her to return to work on light duty. She stated her next appointment with I ——— was in six (6) weeks. She stated she was evaluated by ——— on October 5, 2004, at the suggestion of her attorney. She stated she had seen no other physicians for treatment as a result of this injury. She denied re-injuries to her right shoulder. She denied medical treatment to her neck or back.

She stated she cannot raise her right arm above her head due to pain in her right shoulder. She stated she had pain in her right shoulder on lifting ten (10) to fifteen (15) pounds, twisting and turning her right arm, and on pushing and pulling. She stated she had numbness and tingling in her right forearm. She stated she had "popping and locking" in her right shoulder. She stated she had occasional "sudden pain" in her right shoulder. She stated she had pain in her right shoulder which radiates into her right arm. She denied radiation of pain from her right shoulder into her neck. She stated her right hand swells occasionally. She stated she had "stabbing pain" in her right palm. She stated she had numbness and tingling and pain in her right index and long fingers and right thumb. She stated she had "popping" in the knuckle of her right long finger and occasional "popping" in her right wrist and right elbow. She stated she had pain in the right side of her neck.

She denied complaints to her upper back.

On today's examination, [redacted] states since last being examined in this office she continued to follow up with [illegible]. She states in November of 2004, at the North Surgery Center [illegible] performed manipulation to the right shoulder under anesthesia. She states she continued to follow up with [illegible] and medications were prescribed. She states she does not recall what if any treatment was received. She states in January of 2005, [illegible] performed an EMG of the right upper extremity. She states she was seeing [illegible] for pain management. She states on March 7, 2005, she followed up with [illegible] and an arthroscopy to the right shoulder was recommended. She states on March 24, 2005, at the North Surgery Center [illegible] performed an arthroscopy to the right shoulder as an outpatient. She states she continued following up with [illegible] and she was told he did not want her back into physical therapy, but he continued to prescribe medications, she was given instructions on a home exercise program, and she was told she could return to work on light duty. She denies returning to work on light duty due to pain in her right shoulder. She states she continued to follow up with [illegible] who recommended she undergo physical therapy at Metro Hand Rehabilitation two (2) to three (3) times a week for approximately one (1) month with therapy consisting of hot and cold packs and ultrasound with minimal relief until June of 2005. She states in June of 2005, physical therapy was discontinued due to aggravation of the symptoms in her right shoulder. She states she continued following up with [illegible] for examinations of her right shoulder.

She states on November 3, 2005, she followed up with [illegible] and an MRI of the cervical spine was recommended. She denies the MRI being performed. She states on November 11, 2005, [illegible] performed an EMG of her right upper extremity. She states, on a date she cannot recall, [illegible] recommended ganglion blocks to the right shoulder. She states in January of 2006, she received two (2) ganglion blocks. She states she continued to follow up with [illegible] and he recommended physical therapy, a bone scan, and medications were prescribed. She denies attending physical therapy. She states at Edmond Medical Center she had a bone scan performed. She states she followed up with [illegible] after the bone scan but she does not recall the results. She states she continued following up with [illegible] for pain management. She states on May 1, 2006, she followed up with [illegible] and she was continued on medications, she was referred for an orthopedic hand evaluation, and an MRI of the right shoulder was recommended. She states on May 19,

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2006, at TPG Open MRI an MRI of the right shoulder was performed. She states in July of 2006, she was released by [redacted] and she was released with restrictions. She denies medical treatment from July 7, 2006 through October 23, 2006 due to taking care of her ailing mother. She states on October 23, 2006, she was examined by [redacted] per Court order, and pain management was recommended.

She states on January 22, 2007, she was examined by L[redacted], per Court order, and an MRI of the right shoulder was recommended, she was given instructions on a home exercise program, and medications were prescribed. She states on January 30, 2007, at Medical Plaza Imaging an MRI was performed of her right shoulder. She states she continued following up with [redacted] and he adjusted her medications. She denies an MRI being reviewed with her. She states on July 9, 2007, she followed up with [redacted] and her medications were adjusted, continued her in her home exercise program, and she was told she could return to work with restrictions. She states on September 13, 2007, she was examined by [redacted] for an evaluation, on referral from her attorney. She states, to her knowledge, she has seen no other physicians for treatment as a result of this injury.

She states she has pain in the neck with turning her head to the right and the left. She states she has pain in the neck with rotating her head backwards. She denies pain in the neck with moving her head forwards. She states she has headaches one (1) to two (2) times a week depending on her activity level. She states the headaches begin in her neck and radiate through the entire head. She states Excedrin migraine helps relieve her headaches. She sates she has pain which radiates into her right extremity. She states she has numbness and tingling in the right upper extremity. She states she has locking, clicking, and popping in her neck. She denies other complaints to her neck.

She states she has pain in the right shoulder with raising her arm above her head. She states she has pain in the right shoulder with lifting a can of vegetables. She states she has pain in the right shoulder with turning or twisting at the elbow. She states she has pain in the right shoulder with pushing and pulling. She states she has numbness and tingling in the right shoulder. She states she has popping, clicking, and locking of the right shoulder. She denies other complaints to the right shoulder.

She denies working for an employer since her injury. She denies graduating high school. She states the highest grade she completed was eleventh grade. She states she did not complete her GED. She denies college, trade school, vo-tech, or military training.

She states she worked for [redacted]s from May of 2000 until May of 2004 as a [redacted] She states she mixed icing, iced cakes, decorated them, wording customer service, wash dishes, took cake orders, and put away stock. She states the most she had to lift was fifty (50) pounds. She states prior to that, she worked at the [redacted] from February of 1999 until November of 2001. She states her jobs did overlap. She states she had two (2) jobs at one (1) point. She states she worked there as an [redacted] where she did computer data entry and typing. She states there was no heavy lifting involved. She states prior to that, she worked at [redacted] from May of 1996 until February of 1999 where she worked as a [redacted] icing cakes, decorating them, and she worked in customer service washing dishes, took cake orders, put away stock, and the most she lifted was fifty

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(50) pounds. She states prior to that, she worked at [redacted] from 1995 to 1996 where she worked as a [redacted] or with the same job description as a [redacted]s. She states prior to that, she worked for [redacted]ss from February of 1993 until May of 1995 as a [redacted] with the same job descriptions as a [redacted]

She denies any injuries, major illnesses, or diseases that have caused her to have any permanent disabilities or impairment that were caused by injuries or diseases not related to any job she has ever had. She states she is presently under the care of [redacted] for pain management. She states she visits him every three (3) months refills on her pain medication and for medication adjustments. She states she is taking Lyrica 150 mg two (2) times daily and the side effects are she feels dizzy and fuzzy. She states she takes Tizanidine 4 mg three (3) times daily and the side effects are dizziness and fuzziness, Nabumetone seventy-five (75) mg two (2) times daily and side effects are dizziness and fuzziness, and Lortab 20 mg every eight (8) hours and the side effects are dizziness and fuzziness.

She denies any disabilities to her arms, hands, legs, or feet that is constant and demonstrates a pronounced physical defect. She states she can drive a car for approximately thirty (30) minutes and she can sit for approximately one (1) hour, stand for about fifteen (15) minutes, and walk about fifteen (15) minutes. She states she can lift anywhere from five (5) to ten (10) pounds with her left hand. She states she does not mow the lawn and her brother mows it for her. She denies being able to take care of a small flower or vegetable garden. She states the shaky motion and roto-tilling and the upkeep of it cause pain in her right shoulder. She states she could babysit or take care of a preschool child. She states she could not fish or hunt. She states she has tried fishing and she could not reel a fish in due to pain in her right shoulder. She states she cannot shoot a gun due to pain in her right shoulder. She denies being able to participate in any athletic event. She states the motion jars her shoulder causing pain. She states she can vacuum if she is using her left hand. She states she could perform any kind of hobbies such as collecting pig figurines. She states she has not been involved in any accident or any illness requiring some type of medical treatment or attention since the date of her last injury. She states she cannot work because she has to do everything with her left hand. She states she cannot write a few lines with her right hand. She states she eats with her left hand and she is able to wash her hair. She states she tilts her head forward and washes it with her left hand. She states she does not fix her hair and she wears no makeup. She states she is able to pull her pants up by herself with both hands. She states she cleans herself with her left hand. She states she is living with her mother and brother on one (1) acre of land in Edmond. She states they have some livestock and her mother cares for the animals. She states she does her laundry using both her right and left hand. She states she can load and unload a dishwasher. She states she can cook primarily with her left hand. She states she can make her own bed. She states she can drive if she uses her left hand only to drive and shift into gear.

She states an average day for her consists of getting up around 7:00 or 8:00 a.m. She states she does not usually eat for breakfast. She states she immediately gets up to go to the bathroom. She states afterwards she goes to the kitchen for either a glass of milk, pop, or coffee. She states she then goes to the couch, turns on the television, and adjusts to watch it. She states she smokes approximately one (1) pack of cigarettes per day and she goes outside

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to smoke each time. She states she sits on her porch. She states she usually eats crackers for lunch and then goes back to watch television unless she has a doctor's appointment. She states she also do crossword searches. She states either her mom or her brother make dinner. She states, if she stays with a friend they go out to eat and then straight back home. She states she goes to bed around 10:30 p.m., and she averages approximately four (4) hours of sleep.

She denies prior injuries or medical treatment to her right shoulder.

PAST MEDICAL HISTORY:

This person states she has an eleventh grade education. She denies completion of a GED. She denies college, trade school, or vocational training. She denies military service. She denies hobbies. She is divorced with one (1) child. She denies the use of alcohol. She smokes one (1) package of cigarettes per day. She denies the use of recreational drugs. She denies drug allergies. Current medication is Lyrica, Tizanidine, Naburnetone, Lortab, and Excedrin Migraine. Past occupations include cake decorator and accounting. She is presently unemployed. She has had a fracture of her left clavicle. She has had surgery to her right shoulder and a D & C. She has been hospitalized for one (1) childbirth. She denies motor vehicle accidents with injury. She states she had an on-the-job injury to her left index finger in the 1980's, while working for [redacted]. She denies receiving an award of permanent disability for this injury. She denies other on-the-job injuries or other claims pending.

PHYSICAL EXAMINATION:

Physical examination reveals a forty-three (43) year old white female, 5'5 1/2" in height, weighing one hundred forty-three (143) pounds. Temperature is 98.1 degrees, pulse is 64, respirations are 16, and blood pressure is 120/80.

Musculoskeletal examination reveals no paravertebral muscle spasms or dysmetria of the cervicothoracic spine.

Range of motion of the cervicothoracic spine was performed with a minimum of three (3) measurements which were within the permitted variability. Of these, the maximum range of motion was used to calculate the percentage of impairment, if any.

Examination of the cervicothoracic spine reveals flexion of fifty (50) degrees and extension is sixty (60) degrees. Right and left side bending is forty-five (45) degrees. Right and left rotations are eighty (80) degrees.

Examination of the right shoulder reveals forward flexion of one hundred fifty (150) degrees and backward extension of fifty (50) degrees. Abduction is one hundred fifty (150) degrees and adduction is forty (40) degrees. Internal rotation is seventy (70) degrees and external rotation is sixty (60) degrees. There is no crepitation noted.

Examination of the right elbow reveals flexion on one hundred forty (140) degrees and extension of zero (0). Pronation is eighty (80) degrees and supination is seventy (70) degrees.

Examination of the right wrist reveals extension of sixty (60) degrees and palmar flexion of sixty (60) degrees. Radial deviation is twenty (20) degrees and ulnar deviation is thirty (30) degrees. This person is noted to have a negative Tinel's and Phalen's signs.

Neurological examination reveals deep tendon reflexes to be 2/4 bilaterally of the biceps and triceps. Cranial nerves II-XII are grossly intact. Hand grip is twenty (20) pounds on the right and sixty (60) pounds on the left. Sensory pinpoint sensation is intact in the upper extremities with a decreased sensation on the right side on the right arm. She states she is right hand dominant.

Measurements of the biceps are twenty-six (26) centimeters on the right and twenty-five (25) centimeters on the left. The forearms measure twenty-two (22) centimeters on the right and twenty-one point five (21.5) centimeters on the left.

There are arthroscopic scars noted about the right shoulder, and a five (5) centimeter scar on the lateral aspect of the right shoulder.

X-rays were obtained of the cervical spine. AP, lateral, and both oblique views reveal no radiographic abnormality.

X-rays were obtained of the right elbow. AP and lateral views reveal no radiographic abnormality.

X-rays were obtained of the right shoulder and are compared with previous films of October 25, 2004. AP views, in internal and external rotation, revealed there were two (2) pins in place through the superior lateral aspect of the humeral head consistent with a previous rotator cuff tear. There was no other radiographic abnormality. X-rays obtained on today's examination reveal interval removal of one (1) of the pins previously noted in the humeral head. There is no other significant interval change. There is no other radiographic abnormality noted.

I have reviewed the following information on examination of October 25, 2004:

A history and physical dated May 11, 2004, signed by F [redacted]

a radiology report dated May 11, 2004, signed by L [redacted]

office notes dated May 11, 2004, May 14, 2004, from [redacted] office,

a laboratory report dated May 14, 2004,

a medical report dated May 27, 2004, signed by C [redacted],

office notes dated May 26, 2004, from [redacted]

a patient information form dated June 1, 2004,

a patient questionnaire dated June 1, 2004,

a medical report dated June 1, 2004, signed by [redacted]

a return to work note dated June 1, 2004, signed by [redacted]

an MRI from [redacted] dated June 8, 2004, signed by [redacted]

office notes dated June 14, 2004, signed by [redacted]

a return to work note dated June 14, 2004, from [redacted] office,

a return to work note dated June 25, 2004, from [redacted] office,

an operative report from [redacted] dated July 20, 2004,

office notes dated July 22, 2004, signed by [redacted]

office notes dated July 28, 2004, signed by [redacted]

office notes dated August 10, 2004, signed by [redacted]

a note from [redacted] dated August 12, 2004,

progress notes dated August 12, 2004, signed by [redacted]

progress notes from August 12, 2004 through September 10, 2004, from [redacted]

a medical report dated October 5, 2004, signed by [redacted]

a Form 9 dated October 12, 2004.

DISCUSSION:

[redacted] was observed leaving the office today unlocking her truck door and opening it with her right arm. She was also observed extending her right arm to place a bag into the right front passenger seat. She was observed utilizing both of her arms to steer the wheel of her vehicle.

OPINION:

In my opinion, [redacted] has sustained sixteen (16) percent permanent partial impairment to the body as a whole for injuries to the to the right shoulder as a result of her above stated accident and resulting surgery.

In my opinion, [redacted] has sustained no permanent partial impairment to the cervicothoracic spine, right elbow, or right hand as a result of the above stated accident.

In my opinion, [redacted] has sustained no consequential injury to the cervicothoracic spine therefore no permanent partial impairment to the cervicothoracic spine as a result of the above stated accident. Furthermore, it is my opinion, she has sustained no permanent partial impairment to the right arm or right hand as a result of the above stated accident.

In my opinion, [redacted] period of temporary total disability has long since ended, and she may return to employment. She is in no further need of medical care or continuing medical maintenance.

In my opinion, based on age, education, training, and work experience, [redacted] is not permanently and totally disabled or in need of vocational rehabilitation.

I declare under the penalty of perjury that I have examined this report and all statements contained herein, and to the best of my knowledge and belief, they are true, correct and complete.

Very truly yours,

CBP:bg
10240707.doc

The above computations are based upon and are in substantial accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment* with the exception of scheduled members and impairment not covered by the Guides. The Fifth Edition is utilized for injuries occurring after June 28, 2001. The Fourth Edition is utilized for injuries occurring after November 1, 1993. The third Edition, Revised is utilized for injuries occurring from January 1, 1989 to October 31, 1993. The Second Edition is utilized for injuries occurring from November 1, 1984 to December 1, 1988. The First Edition is utilized for injuries occurring July 1, 1978 to October 31, 1984.

[redacted]

Transcription

Patient:	[redacted]	**Service Date:**	9/22/2005
Soc. Sec. #:	[redacted]	**Injury Date:**	9/22/2005
Date of Birth:	[redacted] **Age:** [redacted]	**Employer:**	[redacted]
Service Location:	CMC - OKC-South	**Dictated By:**	[redacted]
Service ID # :	[redacted]	**Diagnosis:**	840.9 Sprain Of Unspecified Site Of Shoulder

Notes:

CHIEF COMPLAINT:
Patient is a [redacted] employee of [redacted] who complains about his shoulder which was injured on 09/22/2005 9:45:00 AM.
PATIENT STATEMENT:
Patient states :"Slipped coming down hand rail injurying right shoulder, right knee and neck."

Vital Signs: BP: 124/80. P: 98. R: 14. T: 98.2 degrees F orally.
Allergies: No known allergies..
Current Medications: None
Immunizations: Last tetanus vaccination was in June 2005. Time:2:51 PM by: M M.

HISTORY OF PRESENT ILLNESS:
Patient was in his usual state of health until this injury. Injury occurred about 5 hours ago. Injury occurred when he fell as above. Previous treatment this injury: None. Previous injury this extremity: Two surgeries right shoulder and arthroscopy right knee. He denies previous neck injury. Remaining orthopedic history: Arthroscopy left shoulder and left knee.

SOCIAL HISTORY: Smokes 30 cigarettes/day. Has been a smoker for 25 years.
PAST MEDICAL HISTORY:
Surgical History: See History of Present Illness above.. Past medical, surgical, social and family histories, otherwise noncontributory.

ROS:
The patient specifically denies a history of diabetes, ulcers, liver disease, renal failure, G6PD deficiency or glaucoma. There is no exercise induced chest pain or dyspnea. Afebrile at home. Complete and detailed ROS otherwise non-contributory.
PE: APPEARANCE: Well developed, well nourished, well hydrated. In no acute distress.
PSYCH: Alert and oriented times three. Cooperative. Appropriate dress and manner.
VITAL SIGNS: Recorded in Nurses Notes and reviewed by me.
CHEST: Good air movement. Breath sounds clear in all fields.
CARDIAC: Regular rate and rhythm without murmur, rub, click or gallop.
PERIPHERAL VASCULAR: Pulses distal to injury intact. No cyanosis, clubbing or edema.
NEUROLOGIC: Motor and sensory function distal to injury grossly intact.
SKIN: See musculoskeletal exam. Remainder is unremarkable.
MUSCULOSKELETAL:
Cervical: No swelling, discoloration or deformity. Full ROM of neck. No areas of tenderness or spasm. Trachea midline. No adenopathy, thyromegaly or meningeal

Dictated But Not Read
Dictated On: 9/23/2005 8:22 AM

Dictated By: [redacted] PA-C

Permanent Subcommittee on Investigations
EXHIBIT #7a

Transcription

Patient:	[redacted]	**Service Date:**	9/22/2005
Soc. Sec. #:	[redacted]	**Injury Date:**	9/22/2005
Date of Birth:	[redacted] **Age:** [redacted]	**Employer:**	[redacted]
Service Location:	CMC - OKC-South	**Dictated By:**	[redacted], PA-C
Service ID # :	[redacted]	**Diagnosis:**	840.9 Sprain Of Unspecified Site Of Shoulder

Notes:

signs.
Thoracic: No swelling, discoloration or deformity. Full range of motion. No tenderness or spasm.
Right Shoulder: Mature scars. No swelling, discoloration or deformity. Decreased active Range of Motion: Abduction: 120 degrees without pain. Flexion: 120 degrees without pain. Impingement tests: Positive. Stability tests: Negative. Rotator Cuff tests: Negative. Bicipital strum, Speeds and Yergasons: Negative
Right Knee: Mature scars. Normal gait. No swelling, discoloration or deformity. Full range of motion of hip and knee. Moderate crepitance. Tenderness at the medial joint line. Ballotment negative. Lachmans negative. McMurrays test negative. Knee is stable to varus and valgus stress.
****
****
X-RAY / LAB REPORT:
C-Spine X-Ray:
C-spine x-ray: Spurring of anterior end plates at multiple levels. Interpreted in the office.
Shoulder X-Ray: Interpreted in the clinic by me. Retained orthopedic hardware consistent with surgical history.
Right knee x-ray: Interpreted in the office. Patellar spurring. No acute boney abnormality.
****
****
ASSESSMENT:
1. Shoulder pain. 719.41.
2. Knee strain. 844.9.
3. Cervical strain. 847.0.
PLAN:

Education: The findings, treatment and natural course of the diagnosis were discussed. Patient questions were answered. Satisfactory understanding was noted.
MEDICATIONS:
Dispensed medication as follows:
Etodolac 400mg po BID, Cyclobenzaprine 10mg po TID, ultram 50mg po Q4-6h prn pain and analgesic muscle rub. Expected benefits and potential side effects of the medication were dispussed. The patient was advised to take the medication as prescribed until it is completed.
INJECTIBLES:
- Patient declined ketorolac injection.

DURABLE GOODS:

Dictated But Not Read
Dictated On: 9/23/2005 8:22 AM

Dictated By: [redacted] **PA-C**

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[redacted]

Transcription

Patient:	[redacted]	**Service Date:**	9/22/2005
Soc. Sec. #:	[redacted]	**Injury Date:**	9/22/2005
Date of Birth:	[redacted] **Age:** [redacted]	**Employer:**	[redacted]
Service Location:	CMC - OKC-South	**Dictated By:**	[redacted] PA-C
Service ID # :	[redacted]	**Diagnosis:**	840.9 Sprain Of Unspecified Site Of Shoulder

Notes:

Dispensed as follows:
ice/cold pack

PHYSICAL THERAPY:
Schedule for therapy daily until follow up evaluation.
ACTIVITY STATUS:
Modified activity
- No climbing stairs or ladders
- No crawling
- No kneeling or squatting
- No lifting over 25 pounds
- Unable to drive company vehicle.

The patients company was contacted today, [redacted]
RETURN FOR EVALUATION: Monday 9/26/2005 Advised to return to clinic sooner as needed.
Causation: It is my opinion that the above injury is more likely than not directly related to work activities. The employer has been so advised.
OSHA 300 log recordable: YES
I declare under penalty of perjury that I have examined this report and all statements contained herein, and to the best of my knowledge, I believe they are true, correct and complete.

Dictated But Not Read
Dictated On: 9/23/2005 8:22 AM

Dictated By: [redacted] PA-C

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[redacted]

Transcription

Patient:	[redacted]	**Service Date:**	10/6/2005
Soc. Sec. #:	[redacted]	**Injury Date:**	9/22/2005
Date of Birth:	[redacted] **Age:** [redacted]	**Employer:**	[redacted]
Service Location:	CMC - OKC-South	**Dictated By:**	[redacted], DO
Service ID # :	[redacted]	**Diagnosis:**	840.9 Sprain Of Unspecified Site Of Shoulder

Notes:

CHIEF COMPLAINT:
Patient is a [redacted] employee of [redacted] who complains about his shoulder which was injured on 9/22/2005 9:45:00 AM.

PATIENT STATEMENT:
Patient states :"Slipped coming down hand rail injuring right shoulder, right knee and neck."

Vital Signs: BP: 144/86. P: 100. R: 16. T: 98.8 degrees F orally.
The vitals were taken at: 11:37 AM by: C M.

Patient returns for a recheck for the injury stated above.

HISTORY OF PRESENT ILLNESS:
Patient has been working within the duty restrictions. He feels the pattern of symptoms is about the same.. The patient has had the MRI done.

PE:
MUSCULOSKELETAL:
Right Shoulder:
Shoulder demonstrates no abnormalities on appearence.
Decreased ROM of shoulder noted to abduction, flexion, crossing to opposite shoulder with internal rotation with pain to both passive and active ROM
Testing of the shoulder reveals positive impingement
palpation of the shoulder is positive for tenderness at deltoid area and posterior area
Normal sensory function noted.

****
****

X-RAY / LAB REPORT:
MRI:
MRI: See report.

****
****

ASSESSMENT:
1. Shoulder strain. 840.9.

Dictated But Not Read
Dictated On: 10/7/2005 12:47 PM

Dictated By: [redacted], DO

Permanent Subcommittee on Investigations
EXHIBIT #7b

Transcription

Patient:	[redacted]	**Service Date:**	10/6/2005
Soc. Sec. #:	[redacted]	**Injury Date:**	9/22/2005
Date of Birth:	[redacted] **Age:** [redacted]	**Employer:**	[redacted]
Service Location:	CMC - OKC-South	**Dictated By:**	[redacted], DO
Service ID # :	[redacted]	**Diagnosis:**	840.9 Sprain Of Unspecified Site Of Shoulder

Notes:

2. Shoulder tenosynovitis. 726.10.

PLAN:

MEDICATIONS:
Dispensed medication as follows:
And Etodolac 400 1 tablet PO tid with food
Home Exercise program as instructed.

ACTIVITY STATUS:
Modified activity
- No lifting over 15 lbs.
- No pushing/pulling over 15 lbs. of force.
- No reaching above shoulders.
- No squatting.
- No kneeling.
- Unable to drive company vehicle.

RETURN FOR EVALUATION: Friday 10/14/2005

Dictated But Not Read
Dictated On: 10/7/2005 12:47 PM

Dictated By: [redacted]

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[redacted]

Transcription

Patient:	[redacted]	**Service Date:**	10/14/2005
Soc. Sec. #:	[redacted]	**Injury Date:**	9/22/2005
Date of Birth:	[redacted] **Age:** [redacted]	**Employer:**	
Service Location:	CMC - OKC-South	**Dictated By:**	r, DO
Service ID #:	[redacted]	**Diagnosis:**	840.9 Sprain Of Unspecified Site Of Shoulder

Notes:

CHIEF COMPLAINT:
Patient is a [redacted] employee of who complains about his shoulder which was injured on 09/22/2005 9:45:00 AM.

PATIENT STATEMENT:
Patient states :"Slipped coming down hand rail injuring right shoulder, right knee and neck."

Vital Signs: BP: 124/64. P: 60. R: 10. T: 98.2 degrees F orally.

Time:9:12 AM by: E S.
Patient returns for a recheck for the injury stated above.

HISTORY OF PRESENT ILLNESS:
Patient has been working within the duty restrictions. He states that his right knee is fine, but his right shoulder is still hurting.

PE:
MUSCULOSKELETAL:
Right Shoulder:
- Shoulder demonstrates no abnormalities on appearence.
- Decreased ROM of shoulder noted to abduction, flexion, crossing to opposite shoulder with internal rotation with pain to both passive and active ROM
- Testing of the shoulder reveals positive impingement
- palpation of the shoulder is positive for tenderness at deltoid area and posterior area
- Normal sensory function noted.

ASSESSMENT:
1. Shoulder strain. 840.9.
2. Shoulder tenosynovitis. 726.10.

PLAN:

MEDICATIONS:
Patient instructed to continue their previous medications as prescribed.
Home Exercise program as instructed.

Dictated But Not Read **Dictated By:** DO
Dictated On: 10/17/2005 2:18 PM

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Transcription

Patient:	[redacted]	**Service Date:**	10/14/2005
Soc. Sec. #:	[redacted]	**Injury Date:**	9/22/2005
Date of Birth:	[redacted] **Age:** [redacted]	**Employer:**	
Service Location:	CMC - OKC-South	**Dictated By:**	DO
Service ID # :	[redacted]	**Diagnosis:**	840.9 Sprain Of Unspecified Site Of Shoulder

Notes:

ACTIVITY STATUS: MODIFIED ACTIVITY
No lifting, pushing, or pulling over 15lbs.
No reaching above shoulders.

PATIENT REFERRED TO: , MD as soon as possible.
The patient was instructed to return to the clinic as needed.

Dictated But Not Read
Dictated On: 10/17/2005 2:18 PM

Dictated By: DO

Last Update: 10/17/2005 14:18:08 **Last Updated By:** boyerga **Transcription Printed Date:** 02/25/2007

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[redacted] 0702050004254
[redacted]
[redacted] M.D., [redacted], M.D., [redacted] M.D.,
[redacted], M.D., [redacted], M.D., [redacted], II, M.D.,
[redacted]

January 24, 2006

Ms. [redacted]
[redacted]

PATIENT: [redacted]
CLAIM: [redacted]
EVALUATION: Progress
SSN: [redacted]
EMPLOYER: [redacted]
DOI: 09/22/05
DOE: 01/24/06

Dear Ms. [redacted]

This is a progress report on [redacted] who was reevaluated in my office on January 24, 2006.

CHIEF COMPLAINT: Neck pain, right-shoulder pain, and right-arm pain.

BRIEF HISTORY: This is a [redacted] who was injured while actively employed and on the job on September 22, 2005. After an extensive evaluation, the patient was found to have symptomatic cervical spondylosis at C6-7. After failure to respond to aggressive medical management, the patient underwent an anterior cervical microdiscectomy and fusion with instrumentation at C6-7 on December 30, 2005. He has done well. The numbness in his hands has totally abated. His neck and right-arm radicular pain have abated. The patient still has headaches but, in general, is very pleased with the results of surgery.

PHYSICAL EXAMINATION: There is no evidence of an active radiculopathy or myelopathy.

RECOMMENDATIONS/TREATMENT PLAN: The patient is recovering from his recent cervical disc fusion with instrumentation. He is also scheduled to undergo right-

Permanent Subcommittee on Investigations
EXHIBIT #7c

06070205004254

PATIENT: [redacted]
CLAIM: [redacted]
January 24, 2006
Page 2

shoulder surgery by Dr. [redacted] in the near future. I feel that he will be able to undergo shoulder surgery in approximately one month.

WORK STATUS/RESTRICTIONS: The patient is temporarily totally disabled. He tells me that there is no light-duty work available for him on his job and that he has to go back to work with "no restrictions."

ANTICIPATED MMI: One to two months.

"I declare under penalty of perjury that I have examined all statements contained herein, and to the best of my knowledge and belief they are true, correct, and complete."

Yours most sincerely,

[redacted], M.D.
SP:em

Enclosure: Form 5

c:
[redacted], R.N.
[redacted]

[redacted], M.D.
[redacted]

Dictated: 01/24/06
Transcribed: 01/25/06

0607020500004254
M.D., M.D., M.D., M.D.
(800) 742-3 • Fax (405) 749-
Email: Website:

February 28, 2006

PATIENT:
CLAIM:
EVALUATION: Discharge
SSN:
EMPLOYER:
DOI: 09/22/05
DOE: 02/28/06

Dear Ms. Felcyn:

This is a discharge summary on . The patient was reevaluated in my office in neurosurgical consultation on February 28, 2006.

CHIEF COMPLAINT: Neck pain, right-shoulder pain, and right-arm pain.

BRIEF HISTORY: This a who was injured while actively employed and on the job on September 22, 2005. After an extensive neurosurgical evaluation and failure to respond to conservative therapy, the patient underwent an anterior cervical microdiscectomy and fusion with instrumentation at C6-7 for symptomatic cervical spondylosis at C6-7, which I feel was made symptomatic by his on-the-job injury. The patient has had excellent results from his surgery and, at present, has no symptoms of an active radiculopathy or myelopathy.

REVIEW OF SYSTEMS: Not contributory.

PHYSICAL EXAMINATION: The patient has good range of motion of his head and neck in flexion, extension, and lateral bending. He has excellent strength and sensation in his arms and legs. He has normal reflexes and no long-tract signs.

X-RAYS/DIAGNOSTICS: Postoperative cervical spine x-rays show good stability at the C6-7 level and excellent instrumentation at this level, as well.

Permanent Subcommittee on Investigations
EXHIBIT #7d

06070205000425 4

PATIENT: [redacted]
CLAIM: [redacted]
February 28, 2006
Page 2

IMPRESSION: Status post anterior cervical microdiscectomy and fusion with instrumentation at C6-7 for cervical spondylosis at this level, made symptomatic, by history, by an on-the-job injury of September 22, 2005.

PLAN: The patient should continue his home exercise program and is to stay active.

WORK STATUS/RESTRICTIONS: The patient can return to gainful employment at any time. He will be on a 25-pound permanent weight restriction in lifting, bending, pulling, tugging, etc. The patient tells me that he has decided not to return to work as a [redacted] in the future.

MMI: Has been attained as of February 28, 2006.

This is a final disposition.

"I declare under penalty of perjury that I have examined all statements contained herein, and to the best of my knowledge and belief they are true, correct, and complete."

Yours most sincerely,

[redacted] M.D.
SP:em

Enclosure: Form 5

c:
[redacted]
[redacted] s
P. O. Box [redacted]
[redacted], M.D.
[redacted]

Dictated: 02/28/06
Transcribed: 03/01/06

[redacted]005054

[redacted], M. D.

[redacted]

March 27, 2006

[redacted]

PATIENT: [redacted]
CLAIM:
SSN:
EVALUATION: Progress Report
EMPLOYER: [redacted]
DOI: 9/22/05

This is a follow-up orthopedic report on the above patient.

[redacted] is following up for right shoulder arthroscopy and debridement. He reports "I feel great". I can tell a big difference. He has no pain or popping reported. His wounds are benign. He is only six days following the surgery. Physical therapy for a couple of weeks recommended. Anti-inflammatories. I will recheck him in a month.
WORK STATUS: Restrictions for his shoulder for now are ten pounds lifting and ten pounds pushing and pulling. No work overhead or above chest. No crawling or climbing.
ANTICIPATED MMI: Possibly four to six weeks.

"I declare, under penalty of perjury, that I have examined the statements contained herein, and to the best of my knowledge and belief, they are true, correct and complete."

[redacted], M. D.
ntb

cc: [redacted]

Permanent Subcommittee on Investigations
EXHIBIT #7e

0005054

, M.D.

March 6, 2006

PATIENT:
CLAIM:
SSN:
EVALUATION: Progress Report
EMPLOYER:
DOI: 9/22/05

This is a follow-up orthopedic report on the above patient.

is here to discuss surgery. The patient has continued difficulty in his right shoulder. He had a surgery on his neck and that has given him significant improvement of his neck problems and also some improvement on his shoulder. He continues, however, to struggle with shoulder range of motion, strength crepitus and pain. We talked about there being some degenerative changes on his shoulder and we will not be able to alleviate all of his symptoms. The idea of any further surgery for the shoulder would be to stage the shoulder, do debridement, lavage and hopefully improve his symptoms and hopefully buy him a few more years of improved symptomatology. He very much wants to proceed with that surgery. He is left hand dominant. He thinks that he can protect the right shoulder and continue to be fairly functional, post operatively. Scheduling was initiated some time in the next few weeks for his right shoulder arthroscopy, debridement and indicated procedures.
WORK STATUS: Restrictions for his shoulder for now are ten pounds lifting and twenty pounds pushing and pulling. No work overhead.
ANTICIPATED MMI: Approximately three to four months post operatively.

"I declare, under penalty of perjury, that I have examined the statements contained herein, and to the best of my knowledge and belief, they are true, correct and complete."

, M.D.
/ntb

0005054

May 22, 2006

PATIENT:
CLAIM:
SSN:
EVALUATION: Progress Report
EMPLOYER:
DOI: 9/22/05

This is a follow-up orthopedic report on the above patient.

is following up for his right shoulder. Range of motion is steadily improved. He is doing very well. He has one hundred and seventy degrees of forward flexion. Abduction to one hundred and ten. External rotation is forty five. Internal rotation is sixty. He is reporting no pain. Slight crepitus. The patient has reached maximum medical improvement. He is released today without restrictions in regards to his shoulder. He will take over the counter anti-inflammatories on an as needed basis.
WORK STATUS: No restrictions.
ANTICIPATED MMI: Today.
IMPAIRMENT RATING: This rating is in accordance with the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. Relative to the patient's injury and subsequent surgery and apportioned to pre-existing degenerative changes, he has a three percent impairment to the whole body based upon his shoulder.

"I declare, under penalty of perjury, that I have examined the statements contained herein, and to the best of my knowledge and belief, they are true, correct and complete."

M. D.

/ntb

cc:

Permanent Subcommittee on Investigations
EXHIBIT #7f

SOCIAL SECURITY NOTICE

From: Social Security Administration

Date: February 21, 2007

[redacted]

Claim Number: [redacted]
Claim for: DIB

We are writing about your claim for Social Security disability benefits. Based on a review of your health problems you do not qualify for benefits on this claim. This is because you are not disabled under our rules.

We have enclosed information about the disability rules and more details about the decision on your claim.

ABOUT THE DECISION

Doctors and other trained staff looked at your case and made this decision. They work for your State but used our rules.

Please remember that there are many types of disability programs, both government and private, which use different rules. A person may be receiving benefits under another program and still not be entitled under our rules. This may be true in your case.

The following reports were used to decide your claim:

MD evidence received 02/06/2007
MD evidence received 02/06/2007

Additional reports were not obtainable.

We have determined that your condition is not severe enough to keep you from working. We considered the medical and other information, your age, education,

Permanent Subcommittee on Investigations
EXHIBIT #7g

[redacted]

training, and work experience in determining how your condition affected your ability to work.

You said that you are unable to work because of neck and shoulder injuries.

The medical evidence shows the following: Although you have pain and discomfort in your neck and shoulder, you can move them well enough to do some types of work. Medical evidence does not show any other impairments which keep you from working.

We realize that your condition keeps you from doing any of your past work, but it does not keep you from doing other work which is less demanding. Based on your age, education and past work experience, you can do other work.

If your condition gets worse and keeps you from working, write, call or visit any Social Security office about filing another application.

In addition, you are not entitled to any other benefits based on this application. If you applied for other benefits, you will receive a separate notice when a decision is made on that claim(s).

IF YOU DISAGREE WITH THE DECISION

If you disagree with the decision, you have the right to appeal. We will review your case and consider any new facts you have. A person who did not make the first decision will decide your case.

- You have 60 days to ask for an appeal
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.
- You have to ask for an appeal in writing. We will ask you to sign a form SSA-561-U2, called "Disability Report-Appeal". You may request this form online at http://www.socialsecurity.gov/online/ssa-561.pdf. Contact one of our offices if you want help.
- In addition, you have to complete a "Reconsideration Disability Report" to tell us about your medical condition since you filed your claim. You may contact one of our offices or call 1-800-772-1213 to request this form. Or, you may complete this report online at http://www.socialsecurity.gov/disability/recon.

Please read the enclosed pamphlet, "Your Right to Question the Decision Made on Your Social Security Claim." It contains more information about the appeal.

NEW APPLICATION

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with this decision and you file a new application instead of appealing:

[redacted]

- you might lose some benefits, or not qualify for any benefits, and
- we could deny the new application using this decision, if the facts and issues are the same.

So, if you disagree with this decision, you should ask for an appeal within 60 days.

IF YOU WANT HELP WITH YOUR APPEAL

You can have a friend, lawyer or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security Office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due benefits to pay toward the fee.

OTHER BENEFITS

Based on the application you filed, you are not entitled to any other benefits, besides those you may already be getting. In the future, if you think you may be entitled to other benefits you will need to apply again.

REQUIREMENTS FOR DISABILITY BENEFITS

DISABILITY INSURANCE BENEFITS

To be considered disabled, a person must be unable to do any substantial gainful work due to a medical condition which has lasted or is expected to last for at least 12 months in a row. The condition must be severe enough to keep a person from working not only in her or his usual job, but in any other substantial gainful work. We look at the person's age, education, training and work experience when we decide whether s/he can work. The condition must be disabling at a time when the person meets the earnings requirement. If you were not disabled when the earnings requirement was met, we have enclosed a leaflet which explains the earnings requirement and tells how Social Security credits are earned.

DISABLED WIDOW OR WIDOWER BENEFITS

To be considered disabled, a widow, widower or surviving divorced spouse (age 50 to 60) must have a physical or mental condition severe enough to keep a person from working. The condition must have lasted or be expected to last for at least 12 months in a row.

The person's disability must start:

* not less than 7 years after the month of death of the wife or husband, or
* for a widow, widower, or surviving divorced spouse, formerly entitled to mother's or father's benefits not later than 7 years after the month those benefits ended, or

* for a widow, widower, or surviving divorced spouse who was previously disabled and who becomes disabled again, not later than 7 years after the prior period of disability ended.

CHILDHOOD DISABILITY BENEFITS

Childhood disability benefits may be paid to a person age 18 or older if the person has a disability which began before age 22 or within 84 months of the end of an earlier period of childhood disability. The condition, whether physical or mental, must be severe enough to keep the person from doing any substantial gainful work. We look at the person's age, education and previous training when we decide whether he or she can work. In addition, the condition must have lasted or be expected to last for at least 12 months in a row.

OTHER IMPORTANT INFORMATION

Definitions of disability are not the same in all government and private disability programs. Government agencies must follow the laws that apply to their own disability programs. A finding by a private organization or other government agency that a person is disabled does not necessarily mean that the person meets the disability requirements of the Social Security Act.

IF YOU HAVE ANY QUESTIONS

If you have any questions, you may call us toll free at 1-800-772-1213. We can answer most questions over the phone. You can also write or visit any Social Security Office. The office that serves your area is located at:

SHEPHERD MALL 2615 VILLA PROM
OKLAHOMA CITY, OK 73107

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us to serve you more quickly.

Ramona Schuenemeyer
Regional Commissioner

KLF/klf

Enclosure:
SSA Pub. No. 05-10058
Form SSA-L443-U2

DO 783

June 8, 2007, 09:08
PAGE 1

NH [redacted]

UNIT: [redacted]

[redacted]

REQUEST FOR RECONSIDERATION

On March 22, 2007, we talked with you and completed your REQUEST FOR RECONSIDERATION for SOCIAL SECURITY BENEFITS. We stored your REQUEST FOR RECONSIDERATION information electronically in our records and attached a summary of your statements.

What You Need To Do

- Review your REQUEST FOR RECONSIDERATION to ensure we recorded your statements correctly.
- If you agree with all your statements, you may retain the REQUEST FOR RECONSIDERATION for your records.
- If you disagree with any of your statements, you should contact us within 10 days after the date of this notice to let us know.

MY NAME IS [redacted]

MY SOCIAL SECURITY NUMBER IS [redacted].

I REQUEST A RECONSIDERATION. I DISAGREE WITH THE DETERMINATION MADE ON MY CLAIM FOR DISABILITY-WORKER OR CHILD BENEFITS BECAUSE I AM UNABLE TO WORK

I HAVE NO ADDITIONAL EVIDENCE TO SUBMIT.

I AM REPRESENTED BY [redacted] WHO IS AN ATTORNEY.

Permanent Subcommittee on Investigations
EXHIBIT #7h

NH [redacted]

MY PHONE NUMBER IS [redacted]

DATE March 22, 2007.

SOCIAL SECURITY ADMINISTRATION

Form Approved
OMB No. 0960-0681

FUNCTION REPORT - ADULT

How your illnesses, injuries, or conditions limit your activities

For SSA Use Only
Do not write in this box.

Related SSN ___ - ___ - ___

Number Holder ___

ORMATION

1. [redacted] 22 05/08/07

2. **SOCIAL SECURITY NUMBER** [redacted]

3. **DATE** *(Month, Day, Year)* 5-16-07

4. **YOUR DAYTIME TELEPHONE NUMBER** *(If there is no telephone number where you can be reached, please give us a daytime number where we can leave a message for you.)*

[redacted] [redacted]
Area Code *Phone Number*

☑ Your Number ☐ Message Number ☐ None

5. a. Where do you live? *(Check one.)*

☑ House ☐ Apartment ☐ Boarding House ☐ Nursing Home
☐ Shelter ☐ Group Home ☐ Other *(What?)* ___

b. With whom do you live? *(Check one.)*

☐ Alone ☑ With Family ☐ With Friends
☐ Other *(Describe relationship.)* ___

SECTION B - INFORMATION ABOUT DAILY ACTIVITIES

6. Describe what you do from the time you wake up until going to bed.

Not much, A little Laundry, water yard
Some Light house cleaing to help my wife

Permanent Subcommittee on Investigations
EXHIBIT #7i

7. Do you take care of anyone else such as a wife/husband, children, grandchildren, parents, friend, other? ☐ Yes ☑ No
If "YES," for whom do you care, and what do you do for them?

8. Do you take care of pets or other animals? ☐ Yes ☑ No
If "YES," what do you do for them?

9. Does anyone help you care for other people or animals? ☑ Yes ☐ No
If "YES," who helps, and what do they do to help? my Wife & Daughter helps with our two Dogs

10. What were you able to do before your illnesses, injuries, or conditions that you can't do now?
Work, Jet Ski; Sold it because Injuries to my Neck Knee Shldr Keep me from most things I used to do.

11. Do the illnesses, injuries, or conditions affect your sleep? ☑ Yes ☐ No
If "YES," how? my Neck Has A Metal Plate in it & I Can't Sleep more than About 4 hrs At A Time without Waking up Hurting.

12. **PERSONAL CARE** (Check here ☑ if **NO PROBLEM** with personal care.)
a. Explain how your illnesses, injuries, or conditions affect your ability to:
Dress NONE
Bathe NONE
Care for hair NONE
Shave NONE
Feed self NONE
Use the toilet NONE
Other? CAN't WALK Stand Sit down for A long Period of Time, without Pain

b. Do you need any special reminders to take care of personal needs and grooming? ☐ Yes ☑ No

If "YES," what type of help or reminders are needed?

c. Do you need help or reminders taking medicine? ☐ Yes ☑ No

If "YES," what kind of help do you need?

13. **MEALS**

a. Do you prepare your own meals? ☑ Yes ☐ No

If "Yes," what kind of food do you prepare? (For example, sandwiches, frozen dinners, or complete meals with several courses). Sandwiches, Frozen Dinners

How often do you prepare food or meals? *(For example, daily, weekly, monthly.)*

Daily

How long does it take you? 30 minutes

Any changes in cooking habits since the illness, injuries, or conditions began?

Not so much

b. If "No," explain why you cannot or do not prepare meals. My Wife does most of the Cooking in our house

14. **HOUSE AND YARD WORK**

a. List household chores, both indoors and outdoors, that you are able to do. *(For example, cleaning, laundry, household repairs, ironing, mowing, etc.)*

Light Cleaning, Laundry, watering Yard my wife mows Yard

b. How much time does it take you, and how often do you do each of these things?

2 or 3 Times a week

c. Do you need help or encouragement doing these things? ☐ Yes ☑ No

If "YES," what help is needed?

d. If you don't do house or yard work, explain why not. Doctors Said I Can't Bend Push Pull Squat Lift over 15 to 25 Lbs Ever.

15. GETTING AROUND

a. How often do you go outside? get the mail

If you don't go out at all, explain why not. water the yard

b. When going out, how do you travel? *(Check all that apply.)*

☐ Walk ☑ Drive a car ☐ Ride in a car ☐ Ride a bicycle

☐ Use public transportation ☐ Other *(Explain)*

c. When going out, can you go out alone? ☑ Yes ☐ No

If "NO," explain why you can't go out alone.

d. Do you drive? ☑ Yes ☐ No

If you don't drive, explain why not.

16. SHOPPING

a. If you do any shopping, do you shop: *(Check all that apply.)*

☑ In stores ☐ By phone ☐ By mail ☐ By computer

b. Describe what you shop for. Presents Birthday Christmas Etc.

c. How often do you shop and how long does it take? Not very Long At All

17. MONEY

a. Are you able to:

Pay bills	☑ Yes	☐ No	Handle a savings account	☑ Yes	☐ No
Count change	☑ Yes	☐ No	Use a checkbook/money orders	☑ Yes	☐ No

Explain all "NO" answers.

b. Has your ability to handle money changed since the illnesses, injuries, or conditions began? ☑ Yes ☐ No

If "YES," explain how the ability to handle money has changed. Have Not Worked Since Injury 9-22-05 Not much Money Comming in

18. **HOBBIES AND INTERESTS**

a. What are your hobbies and interests? *(For example, reading, watching TV, sewing, playing sports, etc.)* TV

b. How often and how well do you do these things? Every day

c. Describe any changes in these activities since the illnesses, injuries, or conditions began.
Watching TV is About all I can do

19. **SOCIAL ACTIVITIES**

a. Do you spend time with others? *(In person, on the phone, on the computer, etc.)* ☑ Yes ☐ No

If "YES," describe the kinds of things you do with others. Talking on Phone to friends Etc.

How often do you do these things? Every once in a while

b. List the places you go on a regular basis. *(For example, church, community center, sports events, social groups, etc.)* Church Now & Then

Do you need to be reminded to go places? ☐ Yes ☑ No

How often do you go and how much do you take part?

Do you need someone to accompany you? ☑ Yes ☐ No

c. Do you have any problems getting along with family, friends, neighbors, or others? ☐ Yes ☑ No

If "YES," explain. _____

d. Describe any changes in social activities since the illnesses, injuries, or conditions began.
Can't go Boating, Jet Skiing, Riding Horses, Taking Long Walk
Playing Sofeball with my Daughter Can't do much Anymore

SECTION C - INFORMATION ABOUT ABILITIES

20. a. Check any of the following items that your illnesses, injuries, or conditions affect:

☑ Lifting	☑ Walking	☑ Stair Climbing	☐ Understanding
☑ Squatting	☑ Sitting	☐ Seeing	☑ Following Instructions
☑ Bending	☑ Kneeling	☐ Memory	☑ Using Hands
☑ Standing	☐ Talking	☑ Completing Tasks	☐ Getting Along With Others
☑ Reaching	☐ Hearing	☐ Concentration	

Please explain how your illnesses, injuries, or conditions affect each of the items you checked. *(For example, you can only lift [how many pounds], or you can only walk [how far])*
15 to 25 Lbs Restrictions for Life from doctor. About A Block

b. Are you: ☐ Right Handed? ☑ Left Handed?

c. How far can you walk before needing to stop and rest? About A Block

If you have to rest, how long before you can resume walking? 5 minutes

d. For how long can you pay attention? A While

e. Do you finish what you start? *(For example, a conversation, chores, reading, watching a movie)* ☑ Yes ☐ No

f. How well do you follow written instructions? *(For example, a recipe)* Good

g. How well do you follow spoken instructions? Good

h. How well do you get along with authority figures? *(For example, police, bosses, landlords or teachers)* Great

i. Have you ever been fired or laid off from a job because of problems getting along with other people? ☐ Yes ☑ No

If "YES," please explain.

If "YES," please give name of employer.

j. How well do you handle stress? OK As good As most People

k. How well do you handle changes in routine? I've Had to Adapt.

l. Have you noticed any unusual behavior or fears? ☑ Yes ☐ No

If "YES," please explain. I'm Not Real Happy About Not being able to Help Support my family & you People Aren't Helping me

21. Do you use any of the following? *(Check all that apply.)*

☐ Crutches	☐ Cane	☐ Hearing Aid
☐ Walker	☑ Brace/Splint	☐ Glasses/Contact Lenses
☐ Wheelchair	☐ Artificial Limb	☐ Artificial Voice Box

☐ Other *(Explain)*

Which of these were prescribed by a doctor? Brace,

When was it prescribed? After Injury

When do you need to use these aids? Every So Often

SECTION D - REMARKS

Use this section for any added information you did not show in earlier parts of this form. When you are done with this section (or if you didn't have anything to add), be sure to complete the fields at the bottom of this page.

I CAN NOT Go back to work, Im On Pain Meds, Ive got Restrictions for Life And Ive Not Had Any Income Since 9-22-05 because of that Im Not Real Happy About you All Keeping me From Recieving SSA. Disability!

Name of person completing this form *(Please print)*	Date *(month, day, year)*
[redacted]	5.16.07
Address *(Number and Street)* [redacted]	email address *(optional)*
City [redacted]	State [redacted] / Zip Code [redacted]

E/ OKLA D
REC. closed 12/26/07

[redacted]

[redacted]

Mailing Address: [redacted]

RECEIVED
NOV 16 2007
OHA OKLA. CITY, OK

Telephone: [redacted]
Facsimile: [redacted]

Serving Oklahoma Since 1977 [redacted]

Location: [redacted]

November 9, 2007

Office of Disability Adjudicaion & Review
[redacted]
Oklahoma City, OK 73102
Attn: [redacted]
Senior Attorney Advisor

Re: [redacted]
SSN [redacted]

Dear [redacted]

Enclosed please find an original document showing that [redacted] does wish to have a hearing in reference to his Social Security Disability claim.

Please ignore the previous notification that he wished to waive his right to a personal appearance.

We will be ready for a hearing whenever the office has prepared the necessary forms and set the matter for hearing.

However, due to [redacted] age and his medical condition, I would request that you as Senior Attorney please review the file for the possibility of an on the record favorable decision.

Please review said file and if you find that it meets the criteria, I would ask that you do so and return a favorable decision on behalf of [redacted]

Thank you for your assistance.

Very truly yours,

[redacted]

[redacted]
Attorney at Law

[redacted]

Enclosure

Permanent Subcommittee on Investigations
EXHIBIT #7j

SOCIAL SECURITY ADMINISTRATION

Refer To: [redacted]

Office of Disability Adjudication and Review
301 Nw 6th St
3rd Floor West
Oklahoma City, OK 73102

Date: DEC 2 6 2007

[redacted]

NOTICE OF DECISION – FULLY FAVORABLE

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

This Decision Is Fully Favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

The Appeals Council May Review The Decision On Its Own

The Appeals Council may decide to review my decision even though you do not ask it to do so. To do that, the Council must mail you a notice about its review within 60 days from the date shown above. Review at the Council's own motion could make the decision less favorable or unfavorable to you.

If You Disagree With The Decision

If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeals Council.

How to File an Appeal

To file an appeal you or your representative must request that the Appeals Council review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the **Appeals Council, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22041-3255**. Please put the Social Security number shown above on any appeal you file.

See Next Page

Permanent Subcommittee on Investigations
EXHIBIT #7k

Time to File an Appeal

To file an appeal, you must file your request for review **within 60 days** from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time to Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider **with** your request for review.

How an Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J).

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The Council may review your case for any reason. It will review your case if one of the reasons for review listed in our regulation exists. Section 404.970 of the regulation lists these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

If No Appeal and No Appeals Council Review

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

See Next Page

[redacted]

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (405)605-3000. Its address is Social Security, 2615 Villa Prom, Shepherd Mall, Oklahoma City, OK 73107.

W. Howard O'Bryan, Jr. (0453)
United States of America
Administrative Law Judge
Federal Administrative Judiciary

cc: [redacted]
Attorney and Counselor at Law
[redacted]

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF	CLAIM FOR
[redacted] (Claimant)	Period of Disability and Disability Insurance Benefits
(Wage Earner)	[redacted] (Social Security Number)

I approve the fee agreement between the claimant and his representative subject to the condition that the claim results in past-due benefits. My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise excepted. I neither approve nor disapprove any other aspect of the agreement.

YOU MAY REQUEST A REVIEW OF THIS ORDER AS INDICATED BELOW

Fee Agreement Approval: You may ask us to review the approval of the fee agreement. If so, write us within 15 days from the day you get this order. Tell us that you disagree with the approval of the agreement and give your reasons. Your representative also has 15 days to write us if he or she does not agree with the approval of the fee agreement. Send your request to this address:

Joan E Parks Saunders, J/D
Regional Chief Administrative Law Judge
SSA ODAR Regional Ofc
Rm 460
1301 Young St
Dallas, TX 75202

Fee Agreement Amount: You may also ask for a review of the amount of the fee due to the representative under this approved fee agreement. If so, please write directly to me as the deciding Administrative Law Judge within 15 days of the day you are notified of the amount of the fee due to the representative. Your representative also has 15 days to write me if he/she does not agree with the fee amount under the approved agreement.

See Next Page

[redacted]

You should include the social security number(s) shown on this order on any papers that you send us.

W. Howard O'Bryan, Jr. (0453)
United States of America
Administrative Law Judge
Federal Administrative Judiciary

DEC 26 2007

Date

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability and Disability Insurance Benefits[1]
(Wage Earner)	[redacted] (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before the undersigned on a request for hearing dated July 19, 2007 (20 CFR 404.929 *et seq.*). The evidence of record supports ***a fully favorable decision; therefore no hearing[2] has been held*** (20 CFR 404.948(a)). The claimant is represented by [redacted] **an attorney.**

The claimant is alleging disability since September 22, 2005.

ISSUES

The issue is whether the claimant is disabled under sections 216(i) and 223(d) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

There is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2010. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful review of the entire record, the undersigned finds that the claimant has been disabled from September 22, 2005 through the date of this decision. The undersigned also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, he is not disabled

---

[1] Title II of the Social Security Act is administered by the Social Security Administration. Title II appears in the United States Code as §§401-433, subchapter II, chapter 7, Title 42. http://www.ssa.gov/OP_Home/ssact/title02/0200.htm [1]

[2] **20 Code of Federal Regulations Ch. III (4-1-06 edition) section 404.948: Deciding a case without an oral hearing before an administrative law judge.** (a) *Decision wholly favorable.* If the evidence in the hearing record supports a finding in favor of you and al the parties on every issue, the Administrative Law Judge may issue a hearing decision without holding an oral hearing. ... [2]

See Next Page

regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e) and 404.1545; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f)). If the claimant has the residual functional capacity to do his past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does nothave any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g)), the undersigned must determine whether the claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he is not disabled. If the claimant is not able to do other work and meets the duration requirement, he is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g) and 404.1560(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. The claimant's date last insured is December 31, 2010.

2. The claimant has not engaged in substantial gainful activity since September 22, 2005, the alleged onset date (20 CFR 404.1520(b) and 404.1571 *et seq.*).

3. The claimant has the following severe impairment(s):

Other and unspecified arthropathies (7160), etc., etc.,	**Disorders of back discogenic and degenerative (7240), etc., etc., etc.,**

(20 CFR 404.1520(c)).

4. The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d)).

5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform sedentary work except the record shows the claimant is functional below the sedentary level for any sustained, continual or regular activity.

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and

See Next Page

other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

BRIEF HISTORY: This a 51-year-old [redacted] who was injured while actively employed and on the job on September 22, 2005. After [redacted]sive neurosurgical evaluation and failure to respond to conservative therapy, the patient underwent an anterior cervical microdiscectomy and fusion with instrumentation at C6-7 for symptomatic cervical spondylosis at C6-7, which I feel was made symptomatic by his on-the-job injury. The patient has had excellent results from his surgery and, at present, has no symptoms of an active radiculopathy or myelopathy.

ASSESSMENT:
1. Shoulder strain. 840.9.
2. Shoulder tenosynovitis. 726.10.

Transcription

Patient:	[redacted]	Service Date:	10/14/2005
Soc. Sec. #:	[redacted]	Injury Date:	9/22/2005
Date of Birth:	[redacted] Age: 52	Employer:	[redacted]
Service Location:	[redacted]	Dictated By:	[redacted], DO
Service ID # :	[redacted]	Diagnosis:	840.9 Sprain Of Unspecified Site Of Shoulder

Notes:
ACTIVITY STATUS: MODIFIED ACTIVITY
No lifting, pushing, or pulling over 15lbs.
No reaching above shoulders.

PATIENT REFERRED TO: [redacted] MD as soon as possible.
The patient was instructed to return to the clinic as needed.

FEB-25-07 11:41 FROM- [redacted] T-235 P.035/014 F-486

Transcription

Patient:	[redacted]	Service Date:	10/6/2005
Soc. Sec. #:	[redacted]	Injury Date:	9/22/2005
Date of Birth:	[redacted] Age: 52	Employer:	[redacted]
Service Location:	[redacted]	Dictated By:	[redacted], DO
Service ID # :	[redacted]	Diagnosis:	840.9 Sprain Of Unspecified Site Of Shoulder

Notes:
2. Shoulder tenosynovitis. 726.10.

PLAN:

MEDICATIONS:
Dispensed medication as follows:
Add Etodolac 400 1 tablet PO tid with food
Home Exercise program as instructed.

ACTIVITY STATUS:
Modified activity
- No lifting over 15 lbs.
- No pushing/pulling over 15 lbs. of force.
- No reaching above shoulders.
- No squatting.
- No kneeling.
- Unable to drive company vehicle.

RETURN FOR EVALUATION: Friday 10/14/2005

[redacted]

I. EXERTIONAL LIMITATIONS

☐ None established. (Proceed to section B.)

1. Occasionally lift and/or carry (including upward pulling) (maximum) - when less than one-third of the time or less than 10 pounds, explain the amount (time/pounds) in item 6.

   ☐ less than 10 pounds
   ☐ 10 pounds
   ☒ 20 pounds
   ☐ 50 pounds
   ☐ 100 pounds or more

2. Frequently lift and/or carry (including upward pulling) (maximum) - when less than two-thirds of the time or less than 10 pounds, explain the amount (time/pounds) in item 6

   ☐ less than 10 pounds
   ☒ 10 pounds
   ☐ 25 pounds
   ☐ 50 pounds or more

3. Stand and/or walk (with normal breaks) for a total of -

   ☐ less than 2 hours in an 8-hour workday
   ☐ at least 2 hours in an 8-hour workday
   ☒ about 6 hours in an 8-hour workday
   ☐ medically required hand-held assistive device is necessary for ambulation

4. Sit (with normal breaks) for a total of -

   ☐ less than about 6 hours in an 8-hour workday
   ☒ about 6 hours in an 8-hour workday
   ☐ must periodically alternate sitting and standing to relieve pain or discomfort. (If checked, explain in 6.)

5. Push and/or pull (including operation of hand and/or foot controls) -

   ☒ unlimited, other than as shown for lift and/or carry
   ☐ limited in upper extremities (describe nature and degree)
   ☐ limited in lower extremities (describe nature and degree)

6. Explain how and why the evidence supports your conclusions in item 1 through 5.
   Cite the specific facts upon which your conclusions are based.
   52 year old with 12 years of education alleging neck And shoulder injuries. S/P C/S microdiscectomy and fusion with instrumentation at C6-7 and arthroscopy of right shoulder. MRS 3/06 shows permanent restrictions of 25# lifting, bending, pulling, tugging, etc. MER shows right shoulder decreased ROM with crepitus and no pain. ADL's indicate he is able to perform his own personal care, prepares simple meals, does laundry, drives and has sleep problems due to arm pain. PO observation shows that he walked slow and deliberate, and often rubbed his neck.

☒ Continued on Page 3

Various physicians, treating and non-treating, have written that the claimant suffered from various medical problems and that the claimant has significant work restrictions.

See Next Page

While the finding that a person is "disabled" under the provisions of the Social Security Act is an issue reserved to the Commissioner3 (SSR 96-5p1), opinions from any medical source on issues reserved to the Commissioner must never be ignored.

The adjudicator is required to evaluate all evidence in the case record that may have a bearing on the determination or decision of disability, including opinions from medical sources about issues reserved to the Commissioner.

If the case record contains an opinion from a medical source on an issue reserved to the Commissioner, the adjudicator must evaluate all the evidence in the case record to determine the extent to which the opinion is supported by the record.

The fact that the claimant's treating physician, after extensive examinations and treatment, has formed such opinion as to the claimant's ability to perform sustained work activity was precluded strongly suggests a significantly limited residual functional capacity.

Further, considering the claimant's diagnoses and multitude of prescribed medications tried, the undersigned finds that treating physician's opinion is well support and is not inconsistent with the other substantial evidence in the case record; thus, it is afforded controlling weight (20 CFR 404.1527(d)(2) and SSR 96-2p).

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairment(s) could reasonably be expected to produce the alleged symptoms, and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The State agency medical opinions are given little weight because other medical opinions are more consistent with the record as a whole and evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants. Furthermore, the

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3 Under 20 CFR 404.1527(e), some issues are not medical issues regarding the nature and severity of an individual's impairment(s) but are administrative findings that are dispositive of a case; i.e., that would direct the determination or decision of disability. The following are examples of such issues:

- Whether an individual's impairment(s) meets or is equivalent in severity to the requirements of any impairment(s) in the listings;
- What an individual's RFC is;
- Whether an individual's RFC prevents him or her from doing past relevant work;
- How the vocational factors of age, education, and work experience apply; and
- Whether an individual is "disabled" under the Act.

The regulations provide that the final responsibility for deciding issues such as these is reserved to the Commissioner. 33

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State agency consultants did not adequately consider the claimant's subjective complaints or the combined effect of the claimant's impairments.

6. The claimant is unable to perform any past relevant work (20 CFR 404.1565).

The demands of the claimant's past relevant work exceed the residual functional capacity.

7. The claimant was an individual closely approaching advanced age on the established disability onset date (20 CFR 404.1563).

8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564).

9. The claimant's acquired job skills do not transfer to other occupations within the residual functional capacity defined above (20 CFR 404.1568).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c) and 404.1566).

In determining whether a successful adjustment to other work can be made, the undersigned must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2.

If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11).

When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decision-making unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14).

If the claimant has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decision-making (SSR 85-15).

Even if the claimant had the residual functional capacity for the full range of sedentary work, considering the claimant's age, education, and work experience, a finding of "disabled" would be reached by direct application of Medical-Vocational Rule 201.14.

11. The claimant has been under a disability, as defined in the Social Security Act, from September 22, 2005 through the date of this decision (20 CFR 404.1520(g)).

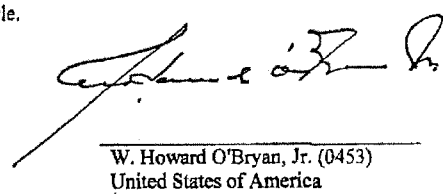
See Next Page

DECISION

Based on the application for a period of disability and disability insurance benefits filed on December 5, 2006, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act beginning on September 22, 2005.

Medical improvement is expected with appropriate treatment. Consequently, a continuing disability review is recommended in 12 months.

Workers' Compensation offset may be applicable.



W. Howard O'Bryan, Jr. (0453)
United States of America
[4]Administrative Law Judge
Federal Administrative Judiciary

DEC 2 6 2007
Date

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[4] W. Howard O'Bryan, Jr., (0453), United States Administrative Law Judge, Social Security Administration, Office of Adjudication and Review. Who may preside: 5 USC 556(b); Powers of the presiding officer: 5 USC 556(c); Special role of the Administrative Law Judge in Social Security: Heckler v. Campbell, 461 U.S. 458, 471, 103 S.Ct. 1952, 1959, 1 S.S.R.S. 3, 10, CCH ¶ 14,585 (1983); Dixon v. Heckler, 811 F.2d 506, 510, 16 S.S.R.S. 279, 283 (10th Cir. 1987) James v. Bowen, 793 F.2d 702, 704-705, 14 S.S.R.S 87, 89-90, CCH ¶ 17,071 (5th Cir. 1986), Carson v. Harris, 651 F.2d 513 (7th Cir. 1981); Cruiker v. Weinberger, 527 F.2d 224 (3rd Cir. 1975) (Administrative Law Judge must develop full record where claimant not represented by counsel); But see, Kane v. Heckler, 731 F.2d 1216, 4 S.S.R.S. 340, CCH ¶ 15,324 (5th Cir. 1984), Dozier v. Heckler, 754 F.2d 274 (8th Cir. 1985); Jordan v. Heckler, 835 F.2d 1314, 20 S.S.R.S. 158, CCH ¶ 17,808 (10th Cir. 1987), (Administrative Law Judge must develop full record even if claimant represented by counsel); Social Security Ruling 71-23; Social Security Regulations 20 CFR §§ 404.944 and 416.1444, see also, 20 CFR 404.950, 404.951, 416.1450 and 416.1451; Social Security Act, §§ 205(b) and 1631(e)(1).

Board Certified Rheumatology

January 4, 2008

Fax:

Fax:

Fax:

Fax:

Re:
DOB:

Dear Doctors:

returns. She was referred by s. not on her insurance currently and s her primary physician. She has Crohn's diagnosed April 2007. The patient is on Remicade.

Her evaluation – lab, unremarkable CBC, B12, and folate. Iron low normal at 36 (35-180). CMP – unremarkable – uric acid 2.2 (2.5-8.0). CPK of 42. SPE is unremarkable. 25-hydroxyvitamin D of 19 (20-100). Normal hemoglobin A1c of 5.2. Normal sed rate of 19. Negative CCP, ANA, rheumatoid factor, CRP, and HLA-B27.

Biomarker profile done September 14, 2007 – (just prior to Remicade) with normal TNF, IL-6, and IL-17 cytokines.

Cervical MRI is reviewed. Some cystic change in the nasopharyngeal soft tissues. C2-C3 with spurring with left neuroforamen narrowing. C3-C4 with spurring with spinal stenosis, uncovertebral spurring, and moderate bilateral neuroforamen narrowing. C4-C5 with moderate spinal stenosis and uncovertebral spurring with moderate bilateral neuroforamen narrowing. C5-C6 with mild spinal stenosis, disc bulge with uncovertebral spurring, and moderate bilateral neuroforamen narrowing. C6-C7 with disc bulge with spurring with mild spinal stenosis, uncovertebral spurring, and bilateral neuroforamen narrowing — mild. C7-T1 posterior ridging with uncovertebral spurs and mild right and minimal left neuroforamen narrowing.

Lumbar MRI is reviewed. L4-L5 with left paracentral rupture. Radiology notes this as small. I think this is a moderate disc rupture and there is dehydration at this disc. Facet arthritis and mild spinal stenosis are noted with moderate neuroforamen narrowing bilaterally. L5-S1 disc disease with facet arthritis. Sacral nerve root sleeves are noted. Left renal cyst.

[redacted]

Permanent Subcommittee on Investigations
EXHIBIT #8a

[redacted]
01/04/2008
Page Two (2)

CAT scan lumbar spine to evaluate for a pars defect. Schmorl's nodes are noted. L4-L5 with disc bulge with spinal stenosis and neuroforamen narrowing. L5-S1 with spurring at the facets with right-sided spurring. SI joints with osteoarthritic changes with gas degeneration. Sacral nerve root sleeves incidentally noted. ASPVD is also seen.

She saw [redacted] He performed three lumbar epidurals. She still is having pain.

Her Crohn'sis active with cramping and diarrhea.

Regarding her Remicade, I think she is on 10 mg/kg every four weeks. I [redacted] sees her next week. She is on Pentasa and has had increased steroid's 40 mg of prednisone.

Regarding her joints, she is having severe neck pain that goes down in both upper extremities, especially on the left. Thoracic spine with pain in the midthoracic region. Lumbar spine bothers her. She cannot sleep more than an hour at a time. She has pain in the back down the back of her legs to the knees in the L4-L5 distribution. She also has pain in the buttock area. She cannot sit for very long.

EXAM:
She has cervical spasm bilaterally. Thoracic spine with some tenderness. Lumbar spine with tenderness bilaterally including the SI joints.

What is going on?

1. Inflammatory arthritis? This is difficult to determine. I do not think she has Rheumatoid Arthritis. A consideration is Crohn's Spondyloarthropathy/Ankylosing Spondylitis. I think she has sacroiliitis on x-ray. Her Fabere's testing of the SI joint was positive on the left. She has had lumbar epidurals. She has not had an SI injection. I talked with [redacted] I [redacted] today. He will see her and review the cause of her pain with SI injections, consider facet injections, and then he will refer her to [redacted] Spine Orthopedics. It is hard to know if she has an inflammatory process. She could still have sacroiliitis even with (otherwise) stabilized Spondyloarthropathy. I recommend continue Remicade. She sees I[redacted] next week. I called his office and I[redacted]s will call me next week.
2. Cervical disc disease. The patient with multilevel disc problems, especially at C5-C6 with moderate spinal stenosis. She has nerve entrapment bilaterally. Multiple other areas with nerve entrapment.
3. Lumbar spine – the patient has L4-L5 ruptured disc. I think this is moderate. The disc is dehydrated but the disc is dehydrated. I think this is very abnormal and her pain distribution goes along with L4-L5. There is overlap with the sacroiliac joints and the L4-L5 disc. I think she will need to see Spine Orthopedics and [redacted]ill facilitate this. We discussed smoking cessation preoperatively.
4. Steroid use – recently increased to 40 mg.
5. GYN – per [redacted] Recent vaginal discharge.
6. Right third MCP lesion – I think benign and do not think inflammatory arthritis.
7. Left third distal phalanx endochondroma – large – pursue subsequently.
8. Bilateral wrist abnormalities on x-ray with scapholunate instability.

[redacted]
01/04/2008
Page Three (3)

9. Activity status – she previously was employed at E [redacted] 'rm. She was there seven years as an [redacted] I saw her as a new patient, August 30, 2007. She did not come for her first return appointment, October 17, 2007. She called the office that she had ceased working. The last day of work at September 6, 2007. I was unable to write for disability without seeing her. I think there was a misunderstanding where by I [redacted] felt I instructed him to write this. She also had problem getting her followup scheduled until today. I talked with [redacted] today. The patient states that her work position has been eliminated.
10. ASPVD – noted on CAT scan films.

I will ask [redacted] to supply some information from her employer. I told her that I think she is best served working to maintain her activity level. However, she has been off work. I recommend physical therapy regarding cervical, thoracic, and lumbar disc disease and sacroiliitis for three weeks. To Whom It May Concern: The patient is unable to work until July 4, 2008. At that time, she will have no restrictions. I request information regarding employment and reassess January 10, 2008.

She will come in the office January 10, 2008, for review of her employment information. I will see her back in two months. Continue her Relafen, Lortab, and Soma. Soma was written today.

Twenty-five minutes spent with the patient today.

Thanks. Will be in touch.

Sincerely yours,

B [illegible]

[redacted]

CC/AAAP/Vashi Transcribe/CD

cc: [redacted]

PATIENT:	[redacted]	**HICN:**	N/A
START OF CARE:	07/30/2008	**DATE OF ONSET:**	07/24/2008, perprescription
AGE / DOB:	[redacted]	**SEX:**	Female
PROVIDER:	[redacted]	**PROVIDER #:**	N/A
MEDICAL Dx:	Lumbar degenerative disc disease (DDD).	**TREATMENT Dx:**	Back and bilateral lower extremity pain and decreased functional mobility.

SHORT-TERM GOALS:

1. The patient will be independent with home exercise program.
2. The patient will rate pain less than 6/10 at its worst.

LONG-TERM GOALS:

1. The patient will rate pain less than 4/10 at its worst.
2. The patient will report performing laundry, baking, and reaching for objects on lower shelves without exacerbations of pain.
3. The patient will report not having to reposition self more than every 25 minutes without the exacerbation of pain.

PLAN OF TREATMENT (TREATMENT INTERVENTION): Physical therapy for therapeutic exercises, manual therapy, and modalities to decrease pain and increase strength.

FREQUENCY / DURATION: 3 times per week x 4 weeks.

MEDICARE CERTIFICATION PERIOD: N/A.

PRECAUTIONS / CONTRAINDICATIONS: N/A.

PERTINENT MEDICAL HISTORY: The patient complains of back pain for greater than one year. **PAST MEDICAL HISTORY:** Crohn's disease and hypertension. The patient states she has had previous physical therapy for manual therapy and mechanical traction and states that it was quite helpful. **PRIOR LEVEL OF FUNCTION:** Independent. **CURRENT LIVING STATUS / SITUATION:** The patient lives with her significant other. She has no stairs. She currently is unemployed and on disability since September 2007. She states she has difficulty sitting and standing for more than 10 minutes. She has difficulty performing laundry, vacuuming, baking, and getting into the lower shelves at the grocery store. She enjoys sewing, crocheting, reading, bicycling, cooking, and baking. The patient previously worked in an [redacted] firm performing [redacted]

PATIENT GOALS: "To go back to work."

PATIENT EDUCATION NEEDS: The patient was provided with a home exercise program. It was discussed with her the importance of continuing with the exercise program even after discharge from therapy.

P [redacted] 7-30-08
07/30/2008

[redacted]

[redacted]

Permanent Subcommittee on Investigations
EXHIBIT #8b

PATIENT: [redacted] **HICN:** N/A

RESULTS OF EVALUATION: PALPATION / VISUAL INSPECTION: The patient presents with muscle tightness in the paraspinal lumbar region. She had an ERSR at T5 and an ERSR at T8. **PAIN:** Pain is 8/10 at its worst and 0/10 at its best; both scores patient gave are with pain medications and during activity. The patient states pain starts around L4-L5 and radiates down both lower extremities to her feet. **POSTURE / ALIGNMENT:** The patient has an elevated right shoulder and pelvis with increased lordosis. **ROM / JOINT MOBILITY:** Within normal limits. However, the patient does have tight hamstrings at 75 degrees on the right and 60 degrees on the left supine. **STRENGTH:** Strength is 5/5 in all four extremities. **BALANCE:** Within normal limits. **GAIT:** Within normal limits. **SENSATION:** Intact. **SPECIAL TESTS:** N/A. **ADDITIONAL FINDINGS:** N/A.

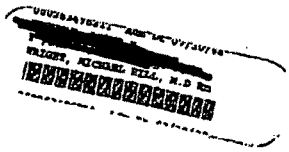
TREATMENT PROCEDURES:

1. Evaluation.
2. Therapeutic exercises.
3. Home exercise program.

CLINICAL IMPRESSION: The patient presents with back and lower extremity pain with decreased functional mobility.

REHABILITATION POTENTIAL & DISCHARGE PLAN: The patient is a 52-year-old female referred to physical therapy with lumbar DDD. She is a good rehabilitation candidate based on prior level of function and motivation. The patient will be discharged when goals are met or if she fails to respond to therapy. She will be discharged with a home exercise program.

PJ:wn
cc: [redacted]
File



[redacted]
4R [redacted]99

From: 4057026718 Page: 8/16 Date: 2/24/2009 1:04:44 PM

Board Certified Rheumatology

July 31, 2008

rimary Care)
Fax: (405) 945-5220

Gastroenterology)
Fax: (405) 632-4073

pine Orthopedics)
Fax: (405) 692-1632

Re:
DOB:

Dear Doctors:

returns. was last seen July 8, 2008. She is continuing to have lumbar pain that radiates down the left leg. She saw July 24, 2008. She has had cervical and lumbar epidurals. Her pain has persisted in the lumbar spine.

Regarding her employment: Her last day of work was September 6, 2007. There was miscommunication among L and me regarding her work situation. D laced her off work approximately September 6, 2007, to January 4, 2008. I wrote for disability from January 4, 2008 until July 4, 2008. She was to see I before July 4, 2008 regarding spine disposition and his opinion of activity restrictions. When I saw her on July 8, 2008, I continued her disability, awaiting opinion.

Her pain is severe. She has problems sitting and standing for more than 10 minutes at a time. Her neck pain is better after cervical epidurals. She does have some lower thoracic pain.

EXAM:
There is some cervical spasm. Thoracic spine with some tenderness in the lower thoracic region. Lumbar spine with tenderness left greater than right. Normal reflexes and strength in the lower extremities. Knees with crepitus.

X-RAYS:
Cervical spine, C4-C7 spurs, especially C5-C7. C5-C7 with disc disease and neuroforamen impingement. Loss of lordosis. Lumbar spine, some facet arthritis L4-S1. ASPVD. AP pelvis is unremarkable.

Lumbar MRI is reviewed. Left renal cyst is noted. T12-L1 with right-sided ruptured disc. L1-L2 I think with right-sided disc bulge. L2-L3 with facet arthritis. L3-L4 disc bulge, facet arthritis, mild spinal stenosis, and mild neuroforamen impingement. L4-L5 with dehydrated disc, extruded disc to the left with severe neuroforamen impingement left greater than right. L5-S1 with central disc and facet arthritis with spinal stenosis and bilateral neuroforamen narrowing. *Radiology does not note abnormalities at T12-L2.*

Permanent Subcommittee on Investigations
EXHIBIT #8c

[redacted]
07/31/2008
Page Two (2)

What is going on?

1. Lumbar disc disease with left-sided ruptured disc at L4-L5. This developed since September 2007 lumbar MRI. She starts physical therapy and sees I [redacted] September 4, 2008. The L4-L5 ruptured disc is large. She has no neurologic deficit.
2. Cervical disc disease, better with epidurals.
3. Thoracic disc disease – will get a thoracic MRI. She has right T12-L1 with rupture on the right.
4. Crohn's, under I [redacted] care. The patient is on Remicade and prednisone.
5. Steroid use – the patient with Crohn's. She takes 20 mg tapering down to 0 every six weeks which cycles with her Remicade.
6. Bilateral knee pain – will x-ray on followup.

To Whom It May Con[illegible] The patient is unable to work until September 4, 2008. I will see her that day after she sees I [redacted] t. At that time, will x-ray her knees.

Thanks. Will be in touch.

Sincerely yours,

[redacted]

CC/AAAP/I [redacted]

cc: [redacted]

SOCIAL SECURITY NOTICE

From: Social Security Administration

Date: August 5, 2008

[redacted]

Claim Number: [redacted]
Claim for: DIB

We are writing about your claim for Social Security disability benefits. Based on a review of your health problems you do not qualify for benefits on this claim. This is because you are not disabled under our rules.

We have enclosed information about the disability rules and more details about the decision on your claim.

ABOUT THE DECISION

Doctors and other trained staff looked at your case and made this decision. They work for your State but used our rules.

Please remember that there are many types of disability programs, both government and private, which use different rules. A person may be receiving benefits under another program and still not be entitled under our rules. This may be true in your case.

The following reports were used to decide your claim:

[redacted] evidence received 07/28/2008
[redacted] evidence received 07/08/2008
[redacted] evidence received 07/08/2008
[redacted] evidence received 07/22/2008
[redacted] evidence received 06/28/2008

We have determined that your condition is not severe enough to keep you from

XXX-[redacted]

Permanent Subcommittee on Investigations
EXHIBIT #8d

working. We considered the medical and other information, your age, education, training, and work experience in determining how your condition affected your ability to work.

You said that you are unable to work because of Crohn's disease and degenerative arthritis of the neck and lower back.

The medical evidence shows the following: You have arthritis of your neck and back. While you are not able to move your neck and back as well as you used to, you are still able to do some types of work. While you have been treated for Crohn's Disease, this condition has not seriously affected your ability to work. Medical evidence does not show any other impairments which keep you from working.

Based on your description of the work you performed as an administrative assistant for six years and six months, evidence indicates you are capable of doing this type of work.

If your condition gets worse and keeps you from working, write, call or visit any Social Security office about filing another application.

In addition, you are not entitled to any other benefits based on this application. If you applied for other benefits, you will receive a separate notice when a decision is made on that claim(s).

IF YOU DISAGREE WITH THE DECISION

If you disagree with the decision, you have the right to appeal. We will review your case and consider any new facts you have. A person who did not make the first decision will decide your case.

- You have 60 days to ask for an appeal
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.
- You have to ask for an appeal in writing. We will ask you to complete a form SSA-561-U2, called "Request for Reconsideration". You may contact one of our offices or call 1-800-772-1213 to request this form. Or you may complete this form online at http://www.socialsecurity.gov/disability/appeal. Contact one of our offices if you want help.
- In addition, you should complete a "Disability Report - Appeal" to tell us about your medical condition since you filed your claim. You may contact one of our offices or call 1-800-772-1213 to request this form. Or, you may complete this report online after you complete the online Request for Reconsideration.

Please read the enclosed pamphlet, "Your Right to Question the Decision Made on Your Social Security Claim." It contains more information about the appeal.

NEW APPLICATION

XXX-XX-[redacted]

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with this decision and you file a new application instead of appealing:

- you might lose some benefits, or not qualify for any benefits, and
- we could deny the new application using this decision, if the facts and issues are the same.

So, if you disagree with this decision, you should ask for an appeal within 60 days.

IF YOU WANT HELP WITH YOUR APPEAL

You can have a friend, lawyer or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security Office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due benefits to pay toward the fee.

OTHER BENEFITS

Based on the application you filed, you are not entitled to any other benefits, besides those you may already be getting. In the future, if you think you may be entitled to other benefits you will need to apply again.

REQUIREMENTS FOR DISABILITY BENEFITS

DISABILITY INSURANCE BENEFITS

To be considered disabled, a person must be unable to do any substantial gainful work due to a medical condition which has lasted or is expected to last for at least 12 months in a row. The condition must be severe enough to keep a person from working not only in her or his usual job, but in any other substantial gainful work. We look at the person's age, education, training and work experience when we decide whether s/he can work. The condition must be disabling at a time when the person meets the earnings requirement. If you were not disabled when the earnings requirement was met, we have enclosed a leaflet which explains the earnings requirement and tells how Social Security credits are earned.

DISABLED WIDOW OR WIDOWER BENEFITS

To be considered disabled, a widow, widower or surviving divorced spouse (age 50 to 60) must have a physical or mental condition severe enough to keep a person from working. The condition must have lasted or be expected to last for at least 12 months in a row.

The person's disability must start:

* not less than 7 years after the month of death of the wife or husband, or
* for a widow, widower, or surviving divorced spouse, formerly entitled to mother's or father's benefits not later than 7 years after the month those benefits ended, or
* for a widow, widower, or surviving divorced spouse who was previously disabled and who becomes disabled again, not later than 7 years after the prior period of disability ended.

CHILDHOOD DISABILITY BENEFITS

Childhood disability benefits may be paid to a person age 18 or older if the person has a disability which began before age 22 or within 84 months of the end of an earlier period of childhood disability. The condition, whether physical or mental, must be severe enough to keep the person from doing any substantial gainful work. We look at the person's age, education and previous training when we decide whether he or she can work. In addition, the condition must have lasted or be expected to last for at least 12 months in a row.

OTHER IMPORTANT INFORMATION

Definitions of disability are not the same in all government and private disability programs. Government agencies must follow the laws that apply to their own disability programs. A finding by a private organization or other government agency that a person is disabled does not necessarily mean that the person meets the disability requirements of the Social Security Act.

IF YOU HAVE ANY QUESTIONS

If you have any questions, you may call us toll free at 1-800-772-1213. We can answer most questions over the phone. You can also write or visit any Social Security Office. The office that serves your area is located at:

200 NE 27TH
MOORE, OK 73160

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us to serve you more quickly.

Ramona Schuenemeyer
Regional Commissioner

JCO/jco

Enclosure:
SSA Pub. No. 05-10058

DO 792

XXX-XX[redacted]

From: [redacted] Page: 3/16 Date: 2/24/2009 1:04:44 PM

Board Certified Rheumatology

November 18, 2008

Re: [redacted]
DOB [redacted]

[redacted] comes for followup. This accompanies her full note. D[redacted]t wrote OxyContin 60 mg b.i.d. #28 on October 29, 2008. She filled it at [redacted] After seeing [redacted] she had a med check in my office. I wrote for OxyContin 20 mg [redacted] #60 which was filled at [redacted] at [redacted]. I also wrote for Soma t.i.d. #90.

She used 1 [redacted]s OxyContin 60 mg and now takes OxyContin 20 mg b.i.d. At this OxyContin dose, she does not need to taper off. She takes Lortab 10 mg. She resumed smoking. She quite smoking for three months and has resumed. The patient is postop. She is not on a nonsteroidal. She is off of prednisone. **She received Remicade November 6, 2008, for Crohn's by [redacted] Will get with E[redacted] regarding Remicade.**

Will discharge the patient for noncompliance.

[redacted]

Permanent Subcommittee on Investigations
EXHIBIT #8e

SOCIAL SECURITY NOTICE
NOTICE OF RECONSIDERATION

From: Social Security Administration

Date: December 23, 2008

[redacted]

Claim Number [redacted]
Claim for: DIB

Upon receipt of your request for reconsideration we had your claim independently reviewed by a physician and disability examiner in the state agency which works with us in making disability determinations. The evidence in your case has been thoroughly evaluated; this includes the medical evidence and the additional information received since the original decision. We find that the previous determination denying your claim was proper under the law. Attached to this notice is an explanation of the decision we made on your claim and how we arrived at it. The reverse of this notice identifies the legal requirements for your type of claim.

ABOUT THE DECISION

Doctors and other trained staff looked at your case and made this decision. They work for your State but used our rules.

Please remember that there are many types of disability programs, both government and private, which use different rules. A person may be receiving benefits under another program and still not be entitled under our rules. This may be true in your case.

In addition to the reports we told you about in our first letter, the following reports were used to decide your claim.

[redacted] evidence received 10/16/2008
[redacted] evidence received 10/20/2008
[redacted] evidence received 10/06/2008
INTEGRIS - [redacted] . E OUTPATIENT REHAB SVCS evidence received 10/27/2008
[redacted] evidence received 11/16/2008
[redacted] evidence received 11/19/2008

XXX-[redacted]

Permanent Subcommittee on Investigations
EXHIBIT #8f

You said that you are unable to work because of Crohn's disease, cervical degenerative disc disease, bilateral neuroforaminal stenosis, lumbar degenerative disc disease, and arthritis.

The medical evidence shows the following: Your Crohn's disease has responded well to treatment. You are recovering well from your back operation and should be able to return to work within twelve months. Medical evidence does not show any other impairments which keep you from working.

Based on your description of the work you performed as administrative assistant for 6 years, evidence indicates you will be capable of doing this type of work as it is generally performed.

IF YOU DISAGREE WITH THE DETERMINATION

If you believe that the reconsideration determination is not correct, you can request a hearing before an administrative law judge of the Office of Hearings and Appeals. If you want a hearing, you must request it no later than 60 days from the date you receive this notice. You may make your request through any Social Security office. As part of the appeal process, you also need to tell us about your current medical condition. We provide a form for doing that, the Disability Report – Appeal. You may contact one of our offices or call 1-800-772-1213 to request this form. Or, you may complete the report online at http://www.socialsecurity.gov/disability/hearing. Read the enclosed leaflet for a full explanation of your right to appeal. Read the enclosed leaflet for a full explanation of your right to appeal.

IF YOU WANT HELP WITH YOUR APPEAL

You can have a friend, lawyer or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security Office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due benefits to pay toward the fee.

NEW APPLICATION

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. You might lose benefits if you file a new application instead of filing an appeal. Therefore, if you think this decision is wrong, you should ask for an appeal within 60 days.

This decision refers only to your claim for benefits under the Social Security Disability Insurance Program. If you applied for other benefits, you will receive a separate notice when a decision is made on that claim(s).

If you have questions about your claim, you should get in touch with any Social Security office. Most questions can be handled by telephone or mail. If you visit an office, however, please be sure you have this notice with you.

In addition, you are not entitled to any other benefits based on this application. If you

have applied for other benefits, you will receive a separate notice when a decision is made on that claim.

Summarized below are legal requirements for the various types of disability claims:

DISABILITY INSURANCE CLAIM

To be considered disabled, a person must be unable to do any substantial gainful work due to a medical condition which has lasted or is expected to last for at least 12 months in a row. The condition must be severe enough to keep a person from working not only in his or her usual job, but in any other substantial gainful work. We look at the person's age, education, training and work experience when we decide whether he or she can work.

DISABLED WIDOW (WIDOWER) CLAIM

A widow, widower, or surviving divorced wife (age 50-60) must meet the disability requirement of the law within a specified 7-year period. A person may be considered disabled only if he or she has a physical or mental impairment that is so severe as to ordinarily prevent a person from working. The disability must have lasted or be expected to last for a continuous period of at least 12 months.

CHILDHOOD DISABILITY BENEFITS

Childhood disability benefits may be paid to a person age 18 or older if the person has a disability which began before age 22 or within 84 months of the end of an earlier period of childhood disability. The condition, whether physical or mental, must be severe enough to keep a person from doing any substantial gainful work. We look at the person's age, education and previous training when we decide whether he or she can work. In addition, the condition must have lasted or be expected to last for at least 12 months in a row.

Ramona Schuenemeyer
Regional Commissioner

WKE/wke

Enclosure:
SSA Pub. No. 70-10281
Form SSA-L928-U2
[redacted]

DO 792

XXX-X[redacted]

April 21, 2009

ADMINISTRATIVE LAW JUDGE
OFFICE OF DISABILITY ADJUDICATION AND REVIEW
STE 300 FEDERAL CAMPUS
301 NW 6TH ST
OKLAHOMA CITY OK 73102-3026

PLSE SHOW TO ALJ OR STAFF ATTY

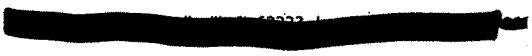
RE:
SSN:

Dear Judge:

Please find enclosed a physical evaluation completed by and rehab notes dated March 12, 2009 from e Outpatient Rehab. Please add this medical information to the Exhibit file. The claimant respectfully requests a case review for a favorable **on-the-record** decision.

The claimant is a 53-year old individual with a high school education and a past work history as an administrative assistant. She stopped working on September 5, 2007 due to degenerative disc disease, crohn's disease, arthritis, and anxiety. After the claimant sopped working on September 5, 2007, she received short term disability from her employer until February 2008 and then long term disability started. Long term disability started in March 2008 and the claimant received approximately $1618.00 on a monthly basis.

is the claimant's treating rheumatologist. She completed the enclosed physical capacities dated March 18, 2009 indicating the claimant cannot perform the requirements of even sedentary work. The claimant needs to alternate her sitting and standing at will throughout the day. She cannot use her hands adequately for simple grasping, fine manipulation, and repetitive motion tasks. The claimant can lift/carry occasionally up to 5 pounds but should never lift/carry over that amount. writes the claimant is in constant pain and her condition is chronic and incurable. The claimant requires daily pain medication and prolonged periods of rest due to fatigue and pain. f writes the claimant has chronic pain and inflammation in the joints, diffuse musculo-skeletal pain which is causing fatigue, inability to concentrate and potential absences from a job due to disease exacerbation. The pain, according to would be disabling to the extent that it would prevent the claimant from working full time at even a sedentary position.



Permanent Subcommittee on Investigations
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RE: [redacted]
SSN[redacted]
Page2

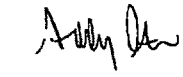
The notes from J[redacted] : Rehab, dated March 12, 2009, indicate the claimant has bilateral hand pain, bilateral foot pain, low back pain, thoracic pain, and hip pain. The claimant cannot perform normal ADLs at home, including vacuuming, unloading dishwasher, or doing laundry.

[redacted] respectfully request that controlling weight in your decision be given to the opinion of her treating rheumatologist, [redacted] in accordance with Section 404.1527(d) and SSR 96-2p.

The claimant's impairments cause her to have limitations of function that would preclude her from performing her past relevant work or any work on a sustained basis. She has limitations that would preclude an individual from being able to perform even sedentary work over the course of a normal 8-hour day or a 40-hour work week. According to SSR96-8p, a finding of disabled is warranted when an individual is unable to sustain work performance over the course of the normal workday or workweek.

We respectfully request your review of the enclosed medical information and thoughtful consideration of a favorable on-the-record decision in [redacted] disability case. If I can be of any assistance or answer any questions, please contact me at [redacted]

Sincerely,



Representative

SOCIAL SECURITY ADMINISTRATION

Refer To: [redacted]

Office of Disability Adjudication and Review
SSA ODAR Hearing Office
301 N. W. 6th St.
3rd Floor West
Oklahoma City, OK 73102

Date: May 21, 2009

[redacted]

NOTICE OF ATTORNEY ADVISOR DECISION – FULLY FAVORABLE

As a result of an additional review, we are able to make a fully favorable medical decision and find that you meet the medical requirements for disability benefits. The onset of your disability is established as of September 5, 2007.

Therefore, it is not necessary to have your case decided at the hearing level by an Administrative Law Judge.

This Decision is Fully Favorable To You

Another office will process the decision and send you a letter about your benefits. We have not yet made a decision about whether you meet the nonmedical requirements, but we will make that decision soon. You will soon get a notice about the amount of your payments if you meet the nonmedical requirements.

If you agree with our revised decision, you need take no further action and your hearing request will be dismissed.

If You Disagree With The Decision

If you disagree with our revised decision, you may request that the Office of Disability Adjudication and Review proceed with your pending request for hearing. Your request should be made in writing and filed within 30 days from the mailing date of this notice. Your request may be filed with any Social Security office.

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (405)799-0702. Its address is Social Security, 200 N. E. 27th, Moore,

Permanent Subcommittee on Investigations
EXHIBIT #8h

Form HA-L10 (03-2007)

[redacted]

[redacted]

Elaine D. Benda
Senior Attorney Advisor

Enclosures:
Form HA-L15 (Fee Agreement Approval)
Decision Rationale

cc: [redacted]

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF ATTORNEY ADVISOR

IN THE CASE OF	CLAIM FOR
[redacted]	Period of Disability and Disability Insurance Benefits
(Claimant)	
(Wage Earner)	[redacted]
	(Social Security Number)

I approve the fee agreement between the claimant and her representative subject to the condition that the claim results in past-due benefits. My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise excepted. I neither approve nor disapprove any other aspect of the agreement.

YOU MAY REQUEST A REVIEW OF THIS ORDER AS INDICATED BELOW

Fee Agreement Approval: You may ask us to review the approval of the fee agreement. If so, write us within 15 days from the day you get this order. Tell us that you disagree with the approval of the agreement and give your reasons. Your representative also has 15 days to write us if he or she does not agree with the approval of the fee agreement. Send your request to this address:

Regional Chief Administrative Law Judge
SSA ODAR Regional Office
Room 460
1301 Young St.
Dallas, TX 75202

Fee Agreement Amount: You may also ask for a review of the amount of the fee due to the representative under this approved fee agreement. If so, please write directly to me as the deciding Attorney Advisor within 15 days of the day you are notified of the amount of the fee due to the representative. Your representative also has 15 days to write me if he/she does not agree with the fee amount under the approved agreement.

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You should include the social security number(s) shown on this order on any papers that you send us.

/s/ Elaine D. Benda

Elaine D. Benda
Senior Attorney Advisor

May 21, 2009
Date

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	CLAIM FOR
[redacted] (Claimant)	Period of Disability and Disability Insurance Benefits
(Wage Earner)	[redacted] (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

The claimant, [redacted], filed an application for disability insurance benefits on June 23, 2008. She alleged an inability to work, beginning September 5, 2007, due to Crohn's disease, neck and back problems, and arthritis. The claim was denied initially and on reconsideration. The matter is now properly before the undersigned on a timely request for hearing. A[redacted] and [redacted] nonattorneys, represent the claimant in this matter.

ISSUES

The general issue is whether the claimant is entitled to a period of disability and disability insurance benefits under sections 216(i) and 223 of the Social Security Act. The specific issue is whether [redacted] is under a disability, which is defined as the inability to engage in any substantial gainful activity by reason of an impairment expected either to result in death or last for a continuous period of at least 12 months. In resolving these issues, the provisions of Social Security Rulings 96-1p through 96-9p and their underlying regulations have been carefully considered and applied where applicable.

There is an additional issue pertaining to insured status. Information contained in Ms [redacted] earnings record reveals that she has acquired sufficient quarters of coverage to remain insured at least through December 31, 2013.

CONCLUSION

After giving careful consideration to all the evidence, the undersigned concludes that a favorable decision is warranted without the need for testimony; thus, no hearing has been held. The documentary records support a finding that since September 5, 2007, the claimant has had medically determinable impairments, namely degenerative disc disease of the cervical, thoracic, and lumbar spines, Crohn's disease, obesity, and chronic pain, that impose significant restrictions on her ability to perform basic work activities. Although these impairments do not meet or equal any listing, singly or in combination, they do result in a residual functional capacity for less than

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a full range of sedentary work. Given such a residual functional capacity, the claimant is unable to perform her past relevant work, and considering her age, education, work experience, and residual functional capacity, she is not able to make an adjustment to work that exists in significant numbers in the national economy. For this reason, the undersigned finds the claimant has been under a disability since September 5, 2007, and she may receive appropriate disability insurance benefits by virtue of her application of June 23, 2008.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e)). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e) and 404.1545; SSR 96-8p).

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Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f)). If the claimant has the residual functional capacity to do her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g)), the undersigned must determine whether the claimant is able to do any other work considering her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, she is not disabled. If the claimant is not able to do other work and meets the duration requirement, she is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g) and 404.1560(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. The claimant's date last insured is December 31, 2013.

2. The claimant has not engaged in substantial gainful activity since September 5, 2007, the alleged onset date (20 CFR 404.1520(b) and 404.1571 *et seq.*).

Any amounts received since the alleged onset date are from short-term and long-term disability payments from the claimant's former employer.

3. The claimant has the following severe impairment(s): degenerative disc disease of the cervical, thoracic, and lumbar spines, Crohn's disease, obesity, and chronic pain (20 CFR 404.1520(c)).

An impairment is "severe" within the meaning of the regulations if it imposes significant restrictions on the ability to perform basic work activities. If an impairment is "not severe," it must be a slight abnormality or combination of slight abnormalities that has no more than a minimal effect on the ability to do basic work activities (SSR 96-3p).

4. The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d)).

5. The claimant has the residual functional capacity to perform less than a full range of sedentary work (20 CFR 404.1567(a)).

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The undersigned must next determine the claimant's residual functional capacity, a term which describes the range of work activities the claimant can perform despite her impairments. In assessing the claimant's residual functional capacity, consideration must be given to subjective allegations. In evaluating subjective complaints, the undersigned must give careful consideration to all avenues presented that relate to such matters as:

1. The nature, location, onset, duration, frequency, radiation, and intensity of any pain;

2. Precipitating and aggravating factors (e.g., movement, activity, environmental conditions);

3. Type, dosage, effectiveness, and adverse side-effects of any pain medication;

4. Treatment, other than medication, for relief of pain;

5. Functional restrictions; and

6. The claimant's daily activities

(20 CFR 404.1529). In evaluating the claimant's subjective complaints, the undersigned also considered Social Security Ruling 96-7p and Luna v. Bowen, 834 F.2d 161 (10th Cir.1987). Social Security Ruling 96-7p discusses a two-step analysis in evaluating pain. Step one requires a determination of whether there is a medically determinable impairment that could reasonably be expected to produce the individual's pain or other symptoms. The adjudicator should proceed to step two only if such an impairment exists. At step two, the adjudicator must evaluate the intensity, persistence, and limiting effects of the individual's pain and other symptoms to determine the extent to which the symptoms limit the claimant's ability to do basic work activities.

The claimant's statements concerning her impairments and their impact on her ability to work are generally credible in light of the reports of the treating and examining practitioners, the findings made on examination, the degree of medical treatment required, and her description of her activities and life style. [redacted] says she experiences difficulty walking, standing, and sitting for extended periods of time due to severe pain in her back. She says she has difficulty lifting and carrying anything heavy due to severe pain in her back. She says her fingers go numb. She says her neck and back pain radiates into her arms and legs. She says she is easily fatigued with minimal physical exertion. [redacted] says she has difficulty falling and staying asleep, and she awakens frequently during the night due to pain. She says she never feels fully rested when she wakes up in the morning. She says that she must take frequent breaks while attempting to do housework. She says that virtually all movement worsens her pain. The claimant has impairments that are reasonably expected to produce the type of pain and limitation she alleges.

The record shows that the claimant has a history of Crohn's disease, which is now apparently stabilized on medications; however, she continues to experience diarrhea several times a day.

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The medical record mentions that the claimant's diffuse joint pain may be related at least in part to her history of Crohn's disease.

Objective testing documents multiple abnormalities throughout the claimant's spine. There is disc bulging with varying degrees of spinal stenosis throughout the cervical, thoracic, and lumbosacral spines. She has participated in conservative treatment that has included physical therapy and epidural steroid injections; however, none of this has resulted in significant relief. She had L4-5 laminectomy discectomy on October 14, 2008, and while this may have helped some, it is documented in the treating records that she continues to have chronic and constant low back pain that requires daily pain medications. The record also states that the clamant is five feet nine inches tall, and during the relevant period, her weight has been over 200 pounds, which equates to a body mass index of 30 or higher. The undersigned finds that the combined effects of obesity with the claimant's other severe impairments is greater than the effects of each of the impairments considered separately.

D[redacted]koff is the claimant's treating rheumatologist. She completed a physical capacities evaluation on March 18, 2009, indicating the claimant cannot perform the requirements of even sedentary work. [redacted] opines that the claimant needs to alternate her sitting and standing at will throughout the day. She cannot use her hands adequately for simple grasping, fine manipulation, and repetitive motion tasks. The claimant can lift/carry occasionally up to five pounds but should never lift/carry over that amount. D[redacted]ff writes the claimant is in constant pain, and her condition is chronic and incurable. The claimant requires daily pain medication and prolonged periods of rest due to fatigue and pain. [redacted] writes the claimant has chronic pain and inflammation in the joints, diffuse musculoskeletal pain which is causing fatigue, inability to concentrate and would have potential absences from a job due to disease exacerbation. The pain, according to [redacted], would be disabling to the extent that it would prevent the claimant from working full time at even a sedentary position. The undersigned finds that [redacted]s opinion is supported by medically acceptable clinical and laboratory diagnostic techniques and not inconsistent with the other substantial evidence in the record; therefore, it is entitled to controlling weight (SSR 96-2p).

As per Social Security Ruling 96-6p, the undersigned also considered the opinion of the State agency medical consultants at the earlier determination levels. Based on additional evidence received into the record at the hearing level, the undersigned finds that the claimant is more limited than was earlier thought. The State agency medical consultants did not adequately consider the combined effect of the claimant's impairments or her credible complaints of pain.

The undersigned finds that the claimant retains the residual functional capacity to perform the demands of less than a full range of sedentary work. She can lift/carry five pounds occasionally, and she can sit less than six hours and stand/walk less than two hours total during an eight-hour day. She needs an option to alternate positions between sitting, standing, and lying at will. She cannot push, pull, or reach frequently or repetitively, and she cannot use her hands frequently or repetitively. Due to chronic pain and fatigue, her ability to maintain concentration, persistence, and pace to any activity is diminished, and she cannot perform work involving attention to detail or exercise of independent judgment. Due to chronic pain and fatigue, her overall endurance and

See Next Page

stamina for activity is diminished, and she requires the ability to take frequent unscheduled rest breaks throughout the day.

6. The claimant is unable to perform her past relevant work (20 CFR 404.1565).

The undersigned finds that the aforementioned residual functional capacity would preclude the claimant from performing her past relevant work as an administrative assistant or information collector, as these jobs required her to remain in one static position for extended periods without interruption, to use her arms frequently or repetitively, and to perform work involving attention to detail, and her past relevant work did not allow for frequent and unscheduled breaks. The demands of the claimant's past relevant work exceed her residual functional capacity.

7. The claimant is an individual closely approaching advanced age for all purposes of this decision (20 CFR 404.1563).

Born [redacted], the claimant was 51 years old on the date of alleged onset of disability and is now 53 years old.

8. The claimant has the equivalent of a high school education (i.e., GED) (20 CFR 404.1564).

9. The claimant has not acquired any skills from past relevant work that would transfer to other work within her residual functional capacity (20 CFR 404.1568).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c) and 404.1566).

If [redacted] were capable of performing a full range of sedentary work, a finding of "disabled" would be reached by application of Medical-Vocational Rule 201.14. As a finding of "disabled" can be made on the basis of the exertional limitations alone, it is unnecessary to consider the further effects of any nonexertional limitations. Considering the claimant's age, education, work experience, and residual functional capacity, the undersigned finds that the claimant cannot make a vocational adjustment to work existing in significant numbers in the national economy. A finding of "disabled" may be reached by application of the above-mentioned rule.

11. The claimant has been under a disability as defined in the Social Security Act since September 5, 2007, the alleged onset date of disability (20 CFR 404.1520(g)).

As the symptoms that prevent the claimant from working have been present since September 5, 2007, a conclusion will be reached that she has been under a disability beginning on that date. In accordance with a finding that the claimant has been under a disability beginning September 5, 2007, she may receive appropriate disability insurance benefits by virtue of her application of June 23, 2008.

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DECISION

It is the decision of the undersigned that, based on the application filed on June 23, 2008, the claimant is entitled to a period of disability commencing September 5, 2007, and to disability insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act.

/s/ Elaine D. Benda

Elaine D. Benda
Senior Attorney Advisor

May 21, 2009
Date

DR: [redacted]
RE: [redacted]
SSN: xxx-x[redacted]

PHYSICAL CAPACITIES EVALUATION

IMPORTANT: Please complete the following items based on your clinical evaluation, other testing results, client discussions and/or medical treatment. Any item that you believe you cannot answer should be marked N/A (Not Available).

In an 8-hour work day, patient can (circle full capacity for each activity):

TOTAL DURING ENTIRE 8-HOUR DAY **(Note: If the combined number of hours of sitting, standing/walking does not add up to eight hours, it will be assumed patient cannot maintain body posture consistent with full-time work)**

A. Sit	(No. hrs.):	less than 1	1	2	3	4	5	6 or more
B. Stand/Walk	(No. hrs.):	less than 1	1	2	3	4	5	6 or more

Does your patient need an opportunity to alternate sitting and standing at will throughout the day?

YES X NO ____

Patient can use hands adequately for the following: (AT TIMES)

	Simple Grasping		Pushing & Pulling		Fine Manipulation	
RIGHT:	YES ____	NO X	YES X	NO ____	YES ____	NO X
LEFT:	YES ____	NO X	YES X	NO ____	YES ____	NO X

Patient can use hands for repetitive motion tasks (writing, typing, assembly, etc.)

LEFT: YES ____ NO X RIGHT: YES ____ NO X

Patient can use feet for repetitive movements as in operating foot controls: (AT TIMES)

RIGHT	LEFT	BOTH
YES ____ NO X	YES ____ NO X	YES ____ NO X

Permanent Subcommittee on Investigations
EXHIBIT #8i

03/12/2009 14:54 TEL [redacted] HOME OFFICE 005/008

DR: [redacted]
RE: [redacted]
SSN: [redacted]

NOTE: IN TERMS OF AN 8-HOUR WORK DAY, "OCCASIONALLY" refers to up to 33% of the day; "FREQUENTLY" 34% - 100%

Patient can lift/carry:	NEVER	OCCASIONALLY	FREQUENTLY
A. 0 to 5 lbs.		X	
B 6 to 10 lbs.	X		
C. 11 to 20 lbs.	X		
D. 21 to 50 lbs.	X		
E. 51 to 100 lbs.	X		

Patient is able to:	NEVER	OCCASIONALLY	FREQUENTLY
A. Climb		X	
B. Balance			X
C. Stoop		X	
D. Kneel		X	
E. Crouch		X	
F. Crawl		X	
G. Reach above shoulder level			X

Restriction of activities involving:	TOTAL	SEVERE	MODERATE	MILD	NONE
A. Unprotected heights:					X
B. Being around moving machinery:					X
C. Exposure to marked changes in temperature and humidity				X	
D. Driving automotive equipment					X
E. Exposure to dust, fumes, and gases					X

ADDITIONAL COMMENTS:

The patient is a constant pain, condition is chronic and unsurable. Requires daily pain meds and prolonged periods of rest 2° to fatigue and pain.

[redacted] March 18, 2009

Physician's Signature Date

PHYSICAL EFFECTS OF PAIN

03/12/2000 14:54 [redacted] HOME OFFICE 008/008

DR: [redacted]
RE: [redacted]
SSN: xxx-x[redacted]

Does the patient suffer from pain?

YES X NO _____

If yes, is there a reasonable medical basis for this patient's pain?

YES X NO _____

Please describe:

Chronic pain and inflammation in the joints, diffuse musculo-skeletal pain which causing fatigue, inability to concentrate and potential absence from the job 2° to disease exacerbation

If yes, is the pain disabling to the extent that it would prevent the patient from working full time at even a sedentary position?

YES X NO _____

Physician's Signature

March 18, 2000
Date

[redacted]

November 26, 2008

[redacted]

RE: [redacted]

Dear [redacted]

This is a 52-year-old woman with a history of Crohn's disease and inflammatory arthritis. The patient was diagnosed with Crohn's disease three years ago and for the last year she has been on Remicade 900 mg IV every six weeks. Her gastroenterologist is [redacted]. He also gave her Pentasa and prednisone on an as needed basis. The patient was receiving rheumatologic care with [redacted] and she prescribed Celebrex 200 mg p.o. daily, OxyContin 20 mg p.o. b.i.d. and Lortab 10 mg every four hours and Soma 350 mg t.i.d. She decided to switch her care to another rheumatologist and that is why I see her today. The patient recently underwent surgery on her back, secondary to disk problems. Today the patient describes severe pain in her hips and her elbows. She requires pain medications around the clock. She denies red, hot joints today. She denies a history of inflammation in her eyes or psoriatic skin disease. Her mother has psoriatic arthritis and two of her sisters have Crohn's disease.

Her physical examination today was remarkable for minimal tenderness to palpation of the back. I removed her spinal brace to examine her. I could not appreciate any evidence of synovitis or dactylitis in the peripheral joints of the upper or lower extremities. But, she has tenderness to palpation of the elbows with preserved range of motion. The patient will continue taking the Remicade administered by [redacted] I refilled her pain medications today and we will see this patient back in three months.

Sincerely,

[redacted]

NM/slq

Electronically signed by [redacted] on 12/02/2008 09:42:42

Cc: [redacted]

Permanent Subcommittee on Investigations
EXHIBIT #8j

[redacted]

January 22, 2009

[redacted]

Do you have other patients who need help with SSDI? Busy healthcare providers use: AllsupCares.com

[redacted]

DEAR I [redacted]

I am representing your patient in a claim for Social Security Disability/Medicare Benefits that is under appeal. I am pursuing a timely approval of benefits and additional information is needed to document the patient's medical file, which includes the following:

Office notes, X-ray reports, and testings from 11-2008 TO PRESENT Note 11-26-08

Enclosed questionnaire (The questionnaire should be completed based on your existing knowledge of the patient's medical conditions).

Enclosed for your file is the Authorization for Release of Confidential Information, verifying I have been appointed the patient's representative and entitled to obtain confidential medical records.

Because timing is so critical to this process, a prompt, faxed response would be greatly appreciated. **Please fax this information** with a copy of our request to (618) 236-8554. If you have any questions, please call (800) 903-3558. An Allsup specialist will contact you in two weeks to inquire on the status. Thank you for your assistance.

Sincerely,

[redacted]

I [redacted]
Social Security Consultant

Enclosure

1-22-09
6
B

[redacted] [redacted] drnotes.doc

Permanent Subcommittee on Investigations
EXHIBIT #8k

[redacted]

[redacted] SEX: F
INSURANCE CO: ZZZAETNA

Date of Service: 07/24/2008 Doctor: 1 [redacted] **M D O/V-INITIAL**
Entered on 07/29/2008 at 03:59 pm

The opinions expressed herein are stated within a reasonable degree of medical certainty.

MHW/MD/vdb

cc: [redacted]

Permanent Subcommittee on Investigations
EXHIBIT #81

[redacted]

[redacted] S[redacted]
[redacted] DO[redacted] SEX: F
INSURANCE CO: ZZZAETNA

Date of Service: 07/24/2008 Doctor: [redacted] O/V-INITIAL
Entered on 07/29/2008 at 03:59 pm

CHIEF COMPLAINT: Low back pain, left leg pain.

HISTORY OF PRESENT ILLNESS: [redacted] a 51year old female with a one year history of low back pain and left leg pain. She has had her MRI and she has had three visits of physical therapy with no significant relief. She has had three epidural steroid injections in her lumbar spine without any significant relief. She complains of low back pain as 70% of her complaints and 30% left leg and hip pain. The leg and hip pain is worse at night. She has no pain increased with coughing or sneezing,and no bowel or bladder dysfunction. She has 8 out of 10 worst day pain and sitting or leaning over increases her pain.

PAST MEDICAL HISTORY: Crone's, hypertension, obesity.

PAST SURGICAL HISTORY: Hernia repair, carpal tunnel release, tubal ligation.

OCCUPATIONAL HISTORY: She is a 51 year old female who is currently on disability. She works for an architectural firm.

CURRENT MEDICATIONS: Remicade.

ALLERGIES: Codeine.

SOCIAL HISTORY: She is a 51 year old divorced female with [redacted] children over the age of 18. She does not smoke at present. She quit one month ago. She does not drink alcohol but she drinks 12 cups of coffee a day.

PHYSICAL EXAMINATION: This is a well nourished, well developed 204 pound female. She ambulates in a normal heel/toe, toe/toe, heel/heel gait with level hips, pelvis and shoulders, normal coronal and sagittal contours to the cervical, thoracic and lumbar spine. She has 5/5 motor strength in her lower extremities, no long tract findings, no clonus. She has a negative straight leg raising examination in a seated position and slightly reduced range of motion by approximately 10% in all planes.

X-RAYS: Plain radiographs and MRI were reviewed. She has some slight degenerative changes at L4-5 and L5-S1. She has some mild spinal stenosis with a disc herniation more prominent on the left at L4-5.

PLAN: We discussed with her that due to the lack of extensive physical therapy, we would like to try at least another four week course of physical therapy and if she continues to have significant severe low back pain and leg pain, we may discuss surgical intervention at her next meeting if that is so indicated. At the termination of our meeting, she asked about her status on disability. She says she can't sit. It appears that she can't work right now and she is going to continue to follow up with _ in regards to treatment for this.

Feb-02-2009 08:40 AM OUSU SPINE CENTER (405)600-1532
From: (405)600 1532 Page: 18/17 Date: 2/2/2009 8:44:04 AM

[redacted]

[redacted] DO[redacted] SEX: F
INSURANCE CO: ZZZAETNA

Date of Service: 09/04/2008 Doctor: [redacted] O/V-FOLLOW UP
Entered on 09/05/2008 at 01:28 pm

[redacted] returns today. She has had three epidural steroid injections and physical therapy. She continues to complain of significant buttock and left leg pain, unresolved by the injections for any extended period of time.

PLAN: After a thorough discussion of the risks and benefits of surgical intervention, she would like to proceed with a lumbar laminectomy decompressive procedure with in situ fusion to see if this will help with her lower extremity pain. She may eventually require a larger surgical intervention if she is unresponsive to this. We will see her back for her pre-operative history and physical. All the risks and benefits of surgery were discussed with her, including heart attack, stroke, infection, neurologic injury, death, paralysis. We will proceed with a lumbar laminectomy decompressive procedure at L4-5 on the left.

This patient was evaluated by both [redacted] and [redacted] A.-C.

The opinions expressed herein are stated within a reasonable degree of medical certainty.

MHW/MD/vdb

cc: [redacted]

Permanent Subcommittee on Investigations
EXHIBIT #8m

[redacted]

Patient Name: [redacted]
Accession#: [redacted]
Date of Birth: [redacted]
Exam Date: 10/14/2008 9:28:00 AM
Ordering Physician: [redacted]

[redacted]
Accession#: [redacted]
Service: IPS

XR SPINE 1 VIEW

History: Laminectomy.

Findings: Single intraoperative view of the lumbar spine for localization level shows surgical instruments at L5 level.

Electronically signed by:

[redacted] D.A.B.R.

Legally authenticated by [redacted]

Permanent Subcommittee on Investigations
EXHIBIT #8n

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability and Disability Insurance Benefits
(Wage Earner)	[redacted] (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

On October 13, 2006, the claimant filed an application for a period of disability and disability insurance benefits, alleging disability beginning November 1, 2004. This claim was denied and is now before the undersigned[1] **Administrative Law Judge, W. Howard O'Bryan, Jr.**, on a timely written request for hearing filed on June 25, 2007 (20 CFR 404.929 *et seq.*). The evidence of record supports ***a fully favorable decision; therefore no hearing has been held*** (20 CFR 404.948(a)). The claimant is represented b[redacted]

ISSUES

The issue is whether the claimant is disabled under sections 216(i) and 223(d) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

There is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2009. Thus,

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[1] 1 Who may preside: 5 USC 556(b); Powers of the presiding officer: 5 USC 556(c); Special role of the Administrative Law Judge in Social Security: Heckler v. Campbell, 461 U.S. 458, 471, 103 S.Ct. 1952, 1959, 1 S.S.R.S. 3, 10, CCH ¶ 14,585 (1983); Dixon v. Heckler, 811 F.2d 506, 510, 16 S.S.R.S. 279, 283 (10th Cir. 1987) James v. Bowen, 793 F.2d 702, 704-705, 14 S.S.R.S. 87, 89-90, CCH ¶ 17,071 (5th Cir. 1986), Cannon v. Harris, 651 F.2d 513 (7th Cir. 1981); Coulter v. Weinberger, 527 F.2d 224 (3rd Cir. 1975) (Administrative Law Judge must develop full record where claimant not represented by counsel); But see, Kane v. Heckler, 731 F.2d 1216, 4 S.S.R.S. 340, CCH ¶ 15,324 (5th Cir. 1984), Dozier v. Heckler, 754 F.2d 274 (8th Cir. 1985); Jordan v. Heckler, 835 F.2d 1314, 20 S.S.R.S. 158, CCH ¶ 17,808 (10th Cir. 1987), (Administrative Law Judge must develop full record even if claimant represented by counsel); Social Security Ruling 71-23; Social Security Regulations 20 CFR §§ 404.944 and 416.1444, see also, 20 CFR 404.950, 404.951, 416.1450 and 416.1451; Social Security Act, §§ 205(b) and 1631(c)(1). 1

1 **20 Code of Federal Regulations Ch. III (4-1-06 edition) section 404.948: Deciding a case without an oral hearing before an administrative law judge.** (*a*) *Decision wholly favorable.* If the evidence in the hearing record supports a finding in favor of you and al the parties on every issue, the Administrative Law Judge may issue a hearing decision without holding an oral hearing. ... 1

Permanent Subcommittee on Investigations
EXHIBIT #9a

the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful review of the entire record, the undersigned finds that the claimant has been disabled from November 1, 2004 through the date of this decision. The undersigned also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has demonstrated the ability to engage in SGA (20 CFR 404.1574 and 404.1575). If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509), the claimant is disabled. If it does not, the analysis proceeds to the next step.

See Next Page

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e) and 404.1545; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b) and 404.1565). If the claimant has the residual functional capacity to do his past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g)), the undersigned must determine whether the claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he is not disabled. If the claimant is not able to do other work and meets the duration requirement, he is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g) and 404.1560(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. The claimant meets the insured status requirements of the Social Security Act through December 31, 2009.

2. The claimant has not engaged in substantial gainful activity since November 1, 2004, the alleged onset date (20 CFR 404.1520(b) and 404.1571 *et seq.*).

Vocational Information
javascript:hideShowDataViewSection(%22JobsWorkedintheLast15years%22)

Jobs Worked in the Last 15 years

Job Title	Type of Business	From	To
1. RETAI SALES	STORES	1973	2004

See Next Page

javascript:hideShowDataViewSection(%22Ticket/ProgramInformation-InitialLevel%22)

Ticket/Program Information - Initial Level

Participate in Ticket program or another program? No

javascript:hideShowDataViewSection(%22Ticket/ProgramInformation-ReconsiderationLevel%22)

Ticket/Program Information - Reconsideration Level

Participate in Ticket program or another program? No

javascript:hideShowDataViewSection(%22Ticket/ProgramInformation-HearingLevel%22)

Ticket/Program Information - Hearing Level

Participate in Ticket program or another program? No

javascript:hideShowDataViewSection(%22AdditionalRehabilitationInformation%22)

Additional Rehabilitation Information

Working now? ***No***

Stopped working because: ***I WAS FIRED FROM MY JOB***

Stopped working when: ***11/01/2001***

Alleged Impairments: ***Knee problems, hip c, mental problems***

3. The claimant has the following severe combination of impairments:

Allegation(s)

javascript:hideShowDataViewSection(%22Impairments,LimitationsandPain-InitialLevel%22)

Impairments, Limitations and Pain - Initial Level

Alleged Impairments: Knee problems, hip c, mental problems

Limitations: I CAN NOT PHYSICALY STAND FOR LONG. I AM DEPRESS,

Pain/Other Symptoms: Yes

Impairments First Bothered: 11/01/2004

Height: 6'

Weight: 265 lbs.

javascript:hideShowDataViewSection(%22EffectonWork-InitialLevel%22)

Effect on Work - Initial Level

Ever Worked: Yes

See Next Page

Working Now: No

When Stopped: 11/01/2001

Stopped Working Because: I WAS FIRED FROM MY JOB

Work After First Bothered: No

javascript:hideShowDataViewSection(%22Impairments,LimitationsandEffects-ReconsiderationLevel%22)

Impairments, Limitations and Effects - Reconsideration Level

Any Changes in Condition: Yes

Changes in Condition: Continuing knee and leg problems as well as back and leg complications.

Date Occurred: 10/08/2006

Any New Illnesses or Injuries: No

Any New Limitations: Yes

New Limitations: depression worsen

Date Occurred: 10/08/2006

How Condition Affects Ability to Care for Personal Needs: Housebound. No interest in anything. I am able to handle bills and finances.

How Daily Activities Changed: less active

Work Since Original Claim Filed: No

Submitting New Evidence: No

Reason Appeal Requested: I AM NO LONGER ABLE TO WORK AND HOLD A JOB.

javascript:hideShowDataViewSection(%22Impairments,LimitationsandEffects-HearingLevel%22)

Impairments, Limitations and Effects - Hearing Level

Any Changes in Condition: No

Any New Illnesses or Injuries: No

Any New Limitations: No

How Condition Affects Ability to Care for Personal Needs: i can barely function. im' becoming more house bound and reclusive. I'm slacking in number of personal needs, do not assoc with friends, stay to my self, extreme fatigue and pain.

How Daily Activities Changed: i cannot drive

Worked Since Filing For Reconsideration: No

Submitting New Evidence: No

Reason Appeal Requested: I CANNOT WORK.

(20 CFR 404.1520(c)).

See Next Page

The above combination of impairments causes significant limitation in the claimant's ability to perform basic work activities.

4. The severity of the claimant's affective (mood) disorders (2960), anxiety related disorders (3000), hepatitis C, disorders of back discogenic and degenerative (7240), knee and leg problems, obesity and hyperalimentation (2780), etc., etc., etc., meets the criteria of section(s) 12.04, 1.04A, 12.06, Social Security Ruling 02-01p, etc., etc., etc., of 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d)).

The record shows the claimant is functional2 below the sedentary level for any sustained, continual or regular activity3.

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

Prior Claim Information

Prior Claim Filed: No

Observations

javascript:hideShowDataViewSection(%22InterviewInformation-InitialLevel%22)

Interview Information - Initial Level

Interview Conducted: Face-to-face with claimant

javascript:hideShowDataViewSection(%22ObservedClaimantDifficulties-InitialLevel%22)

Observed Claimant Difficulties - Initial Level

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2 Residual functional capacity is the claimant's maximum remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis. A "regular and continuing basis" means eight (8) hours a day, for five (5) days (i.e., forty (40) hours) a week or an equivalent work schedule (Social Security Ruling 96-8p). The claimant must have both the mental and physical abilities to perform sustained work activities. Since the evidence supports a finding that the claimant has had a substantial loss of ability to meet the demands of basic work related activities on a sustained basis, the unskilled, sedentary occupational base is significantly eroded and a finding of disability is justified under Social Security Ruling 96-9p. 22

3 **Social Security Ruling 96-8p** provides that a finding of disabled is appropriate whenever there is an inability to persist at work-like tasks for the full course of an 8-hour workday or 5-day workweek. Clearly, the claimant's medically determinable severe impairments preclude the claimant from engaging in substantial gainful activity on a regular and continuing basis. **Social Security Ruling 96-9p** stipulates that an individual who has the residual functional capacity for less than a full range of sedentary work should be considered disabled if their restrictions would significantly erode the occupational base for sedentary work. The claimant is markedly, functionally limited. Thus, a finding of disabled is warranted. **Medical-Vocational Rule 201.00 (h) Appendix 2, Subpart P, Regulations No. 4** may be used as the framework for the decision. It directs a finding of disabled. **Social Security Ruling 85-15** and **Social Security Ruling 96-9p** both stipulate that an individual must, on a sustained basis, be able to understand, remember and carry out simple instructions; make simple work-related decisions; respond appropriately to supervision, coworkers, usual work situations and to deal with changes in a routine work setting. A substantial loss of ability to meet any one of these basic work-related activities would severely limit the potential occupational base for all age groups and warrant a finding of disabled.

See Next Page

Hearing: No
Reading: No
Breathing: No
Understanding: No
Coherency: No
Concentrating: No
Talking: No
Answering: No
Sitting: No
Standing: No
Walking: No
Seeing: No
Using hand(s): No
Writing: No
Observations: I DID NOT NOTICEANYTHING THAT COULD CONTRIBUTE TO THIS CASE.

javascript:hideShowDataViewSection(%22InterviewInformation-ReconsiderationLevel%22)

Interview Information - Reconsideration Level

Interview Conducted: No contact with claimant

Education Information

javascript:hideShowDataViewSection(%22EducationInformation%22)

Education Information

Highest Education Level Completed: 2 years of college

When Completed: 1990

javascript:hideShowDataViewSection(%22LanguageInformation%22)

Language Information

Speaks and Understands English: Yes

Reads English: Yes

Writes More Than Name in English: Yes

Medications

javascript:hideShowDataViewSection(%22MedicationInformation-InitialLevel1of3-CITALPRAH%22)

Medication Information - Initial Level (1 of 3) - CITALPRAH

See Next Page

Name: CITALPRAH
Prescribed By: VETERANS ADMIN HOSPITAL
Reason: DEPRESION
Side Effects: NA
javascript:hideShowDataViewSection(%22MedicationInformation-InitialLevel2of3-HydrocodonewithAPAP%22)

Medication Information - Initial Level (2 of 3) - Hydrocodone with APAP

Name: Hydrocodone with APAP
Prescribed By: VETERANS ADMIN HOSPITAL
Reason: PAIN
Side Effects: NA
javascript:hideShowDataViewSection(%22MedicationInformation-InitialLevel3of3-Ibuprofen%22)

Medication Information - Initial Level (3 of 3) - Ibuprofen

Name: Ibuprofen
Prescribed By: VETERANS ADMIN HOSPITAL
Reason: PAIN
Side Effects: NA
javascript:hideShowDataViewSection(%22MedicationInformation-ReconsiderationLevel1of3-hydrocodone%22)

Medication Information - Reconsideration Level (1 of 3) - hydrocodone

Name: hydrocodone
Prescribed By: VETERANS ADMIN HOSPITAL
Reason: pain
Side Effects: respitory problems
javascript:hideShowDataViewSection(%22MedicationInformation-ReconsiderationLevel2of3-ibuprofin%22)

Medication Information - Reconsideration Level (2 of 3) - ibuprofen

Name: ibuprofen
Prescribed By: VETERANS ADMIN HOSPITAL
Reason: inflammation and pain
Side Effects: fatigue
javascript:hideShowDataViewSection(%22MedicationInformation-ReconsiderationLevel3of3-triaminic%22)

Medication Information - Reconsideration Level (3 of 3) - Triaminic

Name: Triaminic
Prescribed By: VETERANS ADMIN HOSPITAL
Reason: pain

See Next Page

Side Effects: none

javascript:hideShowDataViewSection(%22MedicationInformation-HearingLevel1of4-CITALPRAH%22)

Medication Information - Hearing Level (1 of 4) - CITALPRAH

Name: CITALPRAH

Prescribed By: VETERANS ADMIN HOSPITAL

Reason: DEPRESION

Side Effects: NA

javascript:hideShowDataViewSection(%22MedicationInformation-HearingLevel2of4-hydrocodone%22)

Medication Information - Hearing Level (2 of 4) - hydrocodone

Name: hydrocodone

Prescribed By: VETERANS ADMIN HOSPITAL

Reason: pain

Side Effects: respitory problems

javascript:hideShowDataViewSection(%22MedicationInformation-HearingLevel3of4-methacaroboarol%22)

Medication Information - Hearing Level (3 of 4) - methacaroboarol

Name: methacaroboarol

Prescribed By: VETERANS ADMIN HOSPITAL

Reason: pain

Side Effects: drowsiness

javascript:hideShowDataViewSection(%22MedicationInformation-HearingLevel4of4-tramidol%22)

Medication Information - Hearing Level (4 of 4) - tramidol

Name: tramidol

Prescribed By: VETERANS ADMIN HOSPITAL

Reason: pain

Side Effects: drowsiness

Sources

javascript:hideShowDataViewSection(%22DisabledPersonsInformation-InitialLevel%22)

Disabled Person's Information - Initial Level

Alleged Impairments: Knee problems, hip c, mental problems

Limitations: I CAN NOT PHYSICALY STAND FOR LONG. I AM DEPRESS,

Alleged Onset Date: 11/01/2004

Filing Date: 10/13/2006

See Next Page

javascript:hideShowDataViewSection(%22DisabledPersonsInformation-ReconsiderationLevel%22)

Disabled Person's Information - Reconsideration Level

Any Changes in Condition: Yes

Changes in Condition: Continuing knee and leg problems as well as back and leg complications.

Date Occurred: 10/08/2006

Any New Illnesses or Injuries: No

Any New Limitations: Yes

New Limitations: depression worsen

Submitting New Evidence: No

Reason Appeal Requested: I AM NO LONGER ABLE TO WORK AND HOLD A JOB.

javascript:hideShowDataViewSection(%22DisabledPersonsInformation-HearingLevel%22)

Disabled Person's Information - Hearing Level

Any Changes in Condition: No

Any New Illnesses or Injuries: No

Any New Limitations: No

Submitting New Evidence: No

Reason Appeal Requested: I CANNOT WORK.

javascript:hideShowDataViewSection(%22VETERANSADMINHOSPITAL1of1-InitialLevel%22)

VETERANS ADMIN HOSPITAL (1 of 1) - Initial Level

Source Type: Hospital/Clinic

Source Name: VETERANS ADMIN HOSPITAL

Address: 921 NE 13TH
OKLAHOMA CITY, OK 73104

Outpatient First Visit: 2000

Outpatient Last Visit: 2006

Reason for Visits: ALL MY MEDICAL NEEDS

Treatment: AS NEEDED

Medications: Hydrocodone with APAP , Ibuprofen , CITALPRAH

javascript:hideShowDataViewSection(%22VETERANSADMINHOSPITAL1of1-HearingLevel%22)

VETERANS ADMIN HOSPITAL (1 of 1) - Hearing Level

Source Type: Hospital/Clinic

Source Name: VETERANS ADMIN HOSPITAL

Address: 921 NE 13TH

See Next Page

OKLAHOMA CITY, OK 73104
Outpatient First Visit: 3/2007
Outpatient Last Visit: 3/2007
Reason for Visits: all medical issues
Treatment: meds
Medications: CITALPRAH , hydrocodone , methacaroboarol , tramidol

Onset
javascript:hideShowDataViewSection(%22OnsetDates%22)
Onset Dates

Alleged: 11/01/2004

javascript:hideShowDataViewSection(%22ClaimInformation1of1-InitialLevel%22)
Claim Information (1 of 1) - Initial Level

Type: DIB
Number Holder SSN[redacted]
Number Holder Name[redacted]
First Insured: 10/01/2004
Last Insured: 12/31/2009

javascript:hideShowDataViewSection(%22ClaimInformation1of1-ReconsiderationLevel%22)
Claim Information (1 of 1) - Reconsideration Level

Type[redacted]
Number Holder SSN[redacted]
Number Holder Name[redacted]

javascript:hideShowDataViewSection(%22ClaimInformation1of1-HearingLevel%22)
Claim Information (1 of 1) - Hearing Level

Type:[redacted]
Number Holder SSN[redacted]
Number Holder Name[redacted]

javascript:hideShowDataViewSection(%22ImpairmentsEffectOnWork%22)
Impairments Effect On Work

Impairments First Bothered: 11/01/2004
Work After Above Date: No
When Unable to Work: 11/01/2004
Ever Worked: Yes
Working Now: No
Stopped Working: 11/01/2001

See Next Page

Stopped Working Because: I WAS FIRED FROM MY JOB

Work After First Bothered: No

Reconsideration - Worked Since You Originally Filed: No

Hearing - Worked Since You Filed for Reconsideration: No

javascript:hideShowDataViewSection(%22MiscellaneousInformation-InitialLevel%22)

Miscellaneous Information - Initial Level

Closed Period: No

Various physicians, treating and non-treating, have written that the claimant suffered from various medical problems and that the claimant has significant work restrictions. While the finding that a person is "disabled" under the provisions of the Social Security Act is an issue reserved to the Commissioner4 (SSR 96-5p1), opinions from any medical source on issues reserved to the Commissioner must never be ignored. The adjudicator is required to evaluate all evidence in the case record that may have a bearing on the determination or decision of disability, including opinions from medical sources about issues reserved to the Commissioner. If the case record contains an opinion from a medical source on an issue reserved to the Commissioner, the adjudicator must evaluate all the evidence in the case record to determine the extent to which the opinion is supported by the record.

The fact that the claimant's treating physician, after extensive examinations and treatment, has formed such opinion as to the claimant's ability to perform sustained work activity was precluded strongly suggests a significantly limited residual functional capacity. Further, considering the claimant's diagnoses and multitude of prescribed medications tried, the undersigned finds that treating physician's opinion is well support and is not inconsistent with the other substantial evidence in the case record; thus, it is afforded controlling weight (20 CFR 404.1527(d)(2) and SSR 96-2p).

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

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4 Under 20 CFR 404.1527(e), some issues are not medical issues regarding the nature and severity of an individual's impairment(s) but are administrative findings that are dispositive of a case; i.e., that would direct the determination or decision of disability. The following are examples of such issues:

- Whether an individual's impairment(s) meets or is equivalent in severity to the requirements of any impairment(s) in the listings;
- What an individual's RFC is;
- Whether an individual's RFC prevents him or her from doing past relevant work;
- How the vocational factors of age, education, and work experience apply; and
- Whether an individual is "disabled" under the Act.

The regulations provide that the final responsibility for deciding issues such as these is reserved to the Commissioner. 44

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After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The State agency medical opinions are given little weight because other medical opinions are more consistent with the record as a whole and evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants. Furthermore, the State agency consultants did not adequately consider the claimant's subjective complaints or the combined effect of the claimant's impairments.

The Administrative Law Judge affords greater weight to the opinion of the examining (nontreating) source. This opinion is well supported by medically acceptable clinical and laboratory findings, and is consistent with the record when viewed in its entirety. The State agency consultants did not consider all of the claimant's impairments contained in the medical evidence of the record. The State agency consultants failed to consider the combined effect of all of the claimant's impairments as required by the regulations. The State agency did not adequately consider the entire record, including the statements of collateral sources. The State agency did not adequately consider the entire record, including the subjective complaints and other allegations of the claimant.

5. The claimant has been under a disability, as defined in the Social Security Act, from November 1, 2004 through the date of this decision (20 CFR 404.1520(d)).

DECISION

Based on the application for a period of disability and disability insurance benefits filed on October 13, 2006, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act beginning on November 1, 2004.

Medical improvement is expected with appropriate treatment. Consequently, a continuing disability review is recommended in 12 months.

A determination to appoint a representative payee to manage payments in the claimant's interest is recommended.

See Next Page

W. Howard O'Bryan, Jr. (0453)
United States of America
Administrative Law Judge
Federal Administrative Judiciary

OCT 2 2 2007
Date

Health Summary

Printed On Oct 31, 2006

FINDINGS:

The liver measures 16.3 cm in length and demonstrates no focal parenchymal abnormality. The gallbladder is normal in size and wall thickness and demonstrates no pericholecystic fluid and no intraluminal echoes. The common bile duct is not dilated, measuring 4 mm in diameter. The kidneys measure in length 11.2 cm in the right and 11 cm on the left. Both kidneys demonstrate normal cortical thickness and echogenicity. The spleen measures 14 cm in length. No intraperitoneal free fluid is demonstrated.

Impression:

1. NO FOCAL HEPATIC AENORMALITY IS DEMONSTRATED BY SONOGRAPHY. HOWEVER, ULTRASOUND IS RELATIVELY INSENSITIVE FOR DETECTION OF OCCULT HEPATIC MASSES COMPARED TO CT.
2. SPLENOMEGALY.

A/P: HCV GENO 2B ON WEEK 20 OF TREATMENT

1. Patient having some depression. Denies SI/HI. [redacted] to evaluate today.
2. Continue ribavirin 400mg bid, pegasys 180mcg/wk.
3. Last date of meds 1/6/05
4. RTC GI LIVER 1/13/05 W/ CBCXT, CMP, TSH, HCV QUAL.
5. Instructed pt to go to ER if SI/HI occurs.

Signed by: /es/ Pharm.D.
Clinical Pharmacy Specialist 12/16/2004 14:05

12/15/2004 11:13 Title: MHC BIOFEEDBACK
Length of Visit: 60 minutes
Arrived: On Time

Appearance: Alert, oriented x4, Neatly dressed, groomed, Cooperative, Cheerfull
SI/HI: Patient did not report any SI/HI Ideation.

Session: #6

Diagnosis: Anxiety NOS

Type of Session:
BIOFEEDBACK
OTHER

Temperature: Left
Sensor Placement: Left middle finger, distal pad.

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Pulse
Sensor Placement: Left index finger, distal pad.

Skin Conductance
Sensor Placement: Left thenar eminemce and hypothenar eminence.

Respiration
Sensor Placement: Chest band across the xyphoid process.

TESTING RESULTS:
Temperature L :Beginning temperature was approximately 91.9 degrees F, ending temperature was approximataely 92.75 degrees F. A peak temperature of approximately 92.85 degrees F was achieved approximately 16 minutes into the session. Total temperature change was less than 1 degree [redacted] did not achieve the target temperature of 93 degrees F.

Respiration: Beginning raw respiration was approximately 3040, ending respiration was approximately 3010 with a peak recorded at approximately 3190 and the lowest level at approximately 2890. Beginning respiration rate was approximately 7.5 breaths-per-minute (bpm), ending respiration rate was approximately 15 bpm. A peak rate was recorded at approximately 18 bpm and the slowest rate recorded was approximately 1.9 bpm. The slowest rate was due to [redacted] holding his breath during some of the PMR exercises. Average bpm rate appears to be approximately 13 bpm.kin Conductance: Beginning level was approximately 9.4 micromhos, ending levey 5 micromhos. A peak level was recorded at approximately 12.8 micromhos.

Pulse: Beginning pulse amplitude was approximately 1165, ending pulse amplitude was approximately 1065 with a peak level recorded at approximately 1190 adn the lowest recorded rate was approximately 930. Real-time imagery shows peak-to-peak pulse amplitude between 400-450 most of the session.

Testing session length: 19 min.
Number of epochs: 95

Testing today consisted of a 2-minute pre-testing baseline followed by approximately 15 minutes of Progressive Muscle Relaxation (PMR) exercises followed by a 2-minute post-testing baseline.

Overall Significance:
Upon arrival, [redacted] retold his story of losing his job about 5 weeks ago and how much struggle he has been having over this. He is extremely anxious over this because of it's cyclic nature and for what he was terminated over. As of this time, he is drawing unemployment and he has enough money saved up to get by on.

[redacted] was not able to raise his temperature by a full degree today but his

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beginning temperature was over 91 degrees to start with. He was able to reduce his skin conductance by nearly 50% but it is still very high since target level is less than 1 and [redacted] ended with a 5. Peak-to-peak pulse amplitude was very good today usually in the range of 450-500 per real-time imagery. All recorded parameters are highly suggestive of an individual in a very relaxed state and lowxiety. After today' session, I asked [redacted] how he felt and he said "Great."

Plan: [redacted] is to continue PMR exercises a minimum of 3 times daily and include a slowed breathing technique with them. Breathing exercises should be kept to a maximum of 5 minutes pe session to preclude becoming overly tired. These exercises should be done in conjucntion with daily routines to help make them become a habit easier. [redacted] was also given a copy of a Guided Imagery audio cassette that he can listen to whenevere he feels he is getting stressed. RTC 1 week.

RTC: Dec 22,2004@09:00

Signed by: /es/ , M. Ed.
PSYCHOLOGY TECHNICIAN 12/15/2004 11:45

Receipt Acknowledged by: /es/ PhD
PSYCHOLOGIST, ADMINISTRATIVE 12/16/2004 11:42
DIRECTOR AMHC

Digital Pager: 62/504

12/09/2004 16:57 Title: PC PSYCHOLOGY
HCV SUPPORT GROUP NOTE
12/09/04
1000 - 1130

Today's group focused on stress/anxiety management. Reviewed various relaxation techniques and discussed ways members cope with stress/anxiety. Discussed the role of cognitions mediating the relationship between our experiences and our emotions. Reviewed the importance of monitoring and challenging our automatic thoughts.

Patient reported that he has experienced increased distress during past week. He suggested that it was related to him losing his job several weeks ago. Discussed his change in activity level and routine as one contributor to his distress. Patient also stated that he has not been using relaxation techniques that have been helpful in the past. Discussed increasing his behavioral activation and utilizing stress management techniques.

Affect and mood WNL. Good participation in group. No SI or HI indicated.

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Will generate Voc. Rehab consult.

Patient is not judged to be dangerous to himself or others at this time.

/es/[redacted]
Post Doctoral Fellow
Signed: 01/07/2005 08:00

/es/ Ph.D.
DIRECTOR, HEALTH PSYCHOLOGY CLINIC
Cosigned: 01/11/2005 16:14

TITLE: MHC Biofeedback
DATE OF NOTE: JAN 05, 2005@13:01 ENTRY DATE: JAN 05, 2005@13:01:40
AUTHOR: EXP COSIGNER:
URGENCY: STATUS: COMPLETED

Length of Visit: 60 minutes
Arrived: On Time

Appearance: Alert, oriented x4, Neatly dressed, groomed, Cooperative, Cheerfull, Calm
SI/HI: Patient did not report any SI/HI Ideation.

Session:

Diagnosis: Anxiety NOS

Type of Session:
BIOFEEDBACK
OTHER: Review

All [redacted] wanted to do today was talk. We reviewed the different relaxation techniques he has been taught and he stated that he feels comfortable with them.

He stated that he has been having difficulties with simply not wanting to do anything and nothing even interested him anymore. He will get his last Interferon injection this week and he is hoping that after that injection wears off that he will be able to persue an interest. He is still unemployed but has been in contact with his former employer and may be involved in an investigation of his former supervisor. He stated that he can't even get the energy to apply for a job right now.

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[redacted]

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Progress Note

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[redacted] has started going to the YMCA and swimming laps twice a week now. "I feel good but it wears me out quite easily." Also, his sleeping habits are not providing him with the energy he feels he needs and he does not wake up refreshed. He is not sure if it is a side effect of the Interferon or not.

We talked about his goals, both short and long range. He has not taken a look at them since he initially wrote them down. We talked about the possibility of taking a class either at the college, vo-tech or community center. Nothing discussed appealed to [redacted]. We talked about the difficulty with getting somewhere if you never start and that almost any start in any direction is better than no start at all. I mentioned the possibility of a time management course or self improvement self-help book. [redacted] stated that as an adolescent, he and his family had been in Europe and he had learned to speak a foreign language that he can no longer converse fluently in and there may be a possibility of taking a class or self-study.

Plan: [redacted] is to continue with his Progressive Muscle Relaxation, Breathing Techniques and Visual Imagery as often as he wishes for the next two weeks. He is to also look at his short term and long term goals and select one from each that he feels he can motivate himself with and outline what it will take to reach those goals. RTC 1 week.

RTC: Jan 12,2005@09:00

/es/ M. Ed.
PSYCHOLOGY TECHNICIAN
Signed: 01/05/2005 13:18

Receipt Acknowledged By:
01/11/2005 15:17 /es/ PhD
PSYCHOLOGIST, ADMINISTRATIVE DIRECTOR AMHC

TITLE: PC PSYCHOLOGY
DATE OF NOTE: DEC 23, 2004@14:24 ENTRY DATE: DEC 23, 2004@14:24:21
AUTHOR: EXP COSIGNER:
URGENCY: STATUS: COMPLETED

HCV SUPPORT GROUP NOTE
12/23/04
1000 - 1130

Today's group focused on:
1) Patients reflecting on what they had gained or learned while on treatment.
2) Patients' plans for the holiday.
3) Majority of group focused on sleep management. Reviewed and discussed sleep hygiene. Patients also given written materials on sleep management to

[redacted]

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hydrtherapy and non weight bearing exercises.referred to PT for assistive device and possible cortisone intraarticular inj in Arthritis clinic.
3Mood disorder.On citalopram 10 mg qd,stable no si/hi.
F/U visit in one year.

Signed by: /es/ M.D.
Primary Care Physician 02/09/2005 14:38

02/09/2005 14:45 Title: ADDENDUM
Ref: PC GENERAL NOTE Dated: 02/09/2005 14:25

Todays Vitals
BP 122/75
HR 78
Wt 255.6 Lbs

Signed by: /es/ , M.D.
Primary Care Physician 02/09/2005 14:45

02/09/2005 14:07 Title: MHC BIOFEEDBACK
Length of Visit: 60 minutes
Arrived: On Time

Appearance: Alert, oriented x4, Neatly dressed, groomed, Cooperative, Calm
SI/HI: Patient did not report any SI/HI Ideation.

Session: #7

Diagnosis: Anxiety NOS

Type of Session:
BIOFEEDBACK
OTHER

S: [redacted] arrived today very upbeat and quite talkative. We talked about his goals and plans on how to accomplish them. He is quite goal oriented but needs to make definite plans.

He has completed his Interferon injections and stated that he is feeling better but did not realize how much impact the injections were having on his moods and energy level. He stated that he is going to the YMCA three times weekly and to the VA Health Wing twice a week. He also said that there was a program at the VA Health Wing on Fridays that he wanted to try.

[redacted] talked a long time regarding his goals, things he has done in the past and mistakes he feels that he has made. We discussed the problems with playing the "Would have, Could have, Should have done" game and "What if"

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[redacted]

Permanent Subcommittee on Investigations
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MC

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scenarios. I encouraged him not to second guess himself but remember that the decisions ha has made were done with a limited amount of information and he did the best he could at the moment. I reminded him that if he does not make a decision regarding a goal, he accomplished nothing toward that goal. I urged him to find a "burning desire" for his motivation and keep it in front of him at all times.

Lastly, we talked about the last time that [redacted] had any fun. He stated that it has been a long time and that he has given up a lot of the things he used to do that he enjoyed. I encouraged him to set aside some time each week for fun.

He said that his energy level wanes in the early afternoons but is fine in the mornings. His mornings are quite full every day and he is slowly trying to expand into the afternoons. He is concerned that if he goes on a job interview in the afternoon that he will not be up to his full potential and not make a favorable first impression. We discussed the possibilities of moving the interviews to the morning or reducing his morning activities for the day of the interview to preserve more energy for later on in the day.

A: [redacted] is a well developed, well nourished 50 y/o WM in NAD. He is alert and oriented x3. Eye contact was excellent throughout the session, thoughts were goal directed. Speech patterns were good and he was able to express himself without difficulty. He has completed all of the relaxation exercises I teach and has demonstrated that he is capable of using them with good results. He has identified both short term and long term goals but is having difficulty making decisions on an action plan to satisfy those plans.

Plan: [redacted] is to practice all of his relaxation techniques a minimum of 3 times daily for the next 3 months. He is to include them with his daily routines to help him remember to do them and increase the likelihood of making them habits. He is to continue working with Service Officers for his disability and continue his job searchs. He has stated that he has enough money to last him for three months but I reminded him how quickly the time passes and how long it takes to get paid once employed. He is to develope some immediate goals and steps to accomplish them and try to find something to use for motivation toward fulfilling those goals.

RTC: May 11,2005@10:00

Signed by: /es/ , M. Ed.
PSYCHOLOGY TECHNICIAN 02/09/2005 15:35

Receipt Acknowledged by: /es/ , PhD
PSYCHOLOGIST, ADMINISTRATIVE 02/14/2005 08:29
DIRECTOR AMHC

Health Summary

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Digital Pager: 62 076

04/14/2005 15:49 Title: PC PSYCHOLOGY
HCV SUPPORT GROUP NOTE
04/14/05
1000 - 1130

Group Facilitator:
[redacted] Psychology Fellow
[redacted]ychology Intern

Genotype: 2
Length of TX: >3 months out

Today's group focused on:
Review of confidentiality. [redacted]resented information about Therapeutic Recreation to veterans. Group appeared intrested in activities offered, and several members commented about how they found Therapeutic Recreation useful. Remainder of group focused on discussing how various members are dealing with HCV's impact on physical health, psychological health, and relationships. Members were encouraged to remain active and to explore alternative activities.

Affect and mood WNL. Limited participation in today's group due to needs of other group members. No suicidal or homicidal ideation were indicated.

[redacted] was supportive of other group members facing crises. He shared that he has found exercising in the VA's health wing very beneficial. Reports that he continues to exercise and to spend time volunteering.

DX: HCV
Depression due to general medical condition (HCV)

Plan:
Return to group in one week, 04/21/05.

Patient is not judged to be dangerous to himself or others at this time.

Signed by: /es/
Psychology Intern 04/14/2005 15:54

Cosigned by: /es/ Ph.D.
Psychologist 04/15/2005 11:04

PATIENT NAME AND ADDRESS (Mechanical imprinting, if available)

[redacted]

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[redacted]

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Progress Note

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AUTHOR: EXP COSIGNER:
URGENCY: STATUS: COMPLETED

HCV SUPPORT GROUP NOTE
04/21/05
1000 - 1130

Group Facilitator:
, Ph.D., Psychology Fellow

Genotype: 2
Length of TX: 13 weeks out

Today's group focused on:
1) Patient's checked in and reported on how they have been coping.
2) Discussed how treatment can directly and indirectly affect relationships. Several group members shared how the treatment process has affected their relationship with their spouse. Discussed the need for patients to work on communicating their needs and giving feedback to family and support system.
3) Discussed patient's use of a "higher power" (faith, religion, spiritual) in coping with difficulties associated with HCV treatment.

Affect and mood WNL. Moderate participation in today's group. No suicidal or homicidal ideation was indicated. Supportive of other group members.

[redacted] reported that he has continued to increase his level of activity. He suggested that he still is not able to concentrate and sustain focus like he would like. He continues to look for employment and participate in upward bound program.

DX: HCV
Depression due to general medical condition (HCV)

Plan:
Return to group in one week, 04/28/05.

Patient is not judged to be dangerous to himself or others at this time.

/es/ , Ph.D.
Post Doctoral Fellow
Signed: 04/21/2005 15:48

/es/ , Ph.D.
DIRECTOR, HEALTH PSYCHOLOGY CLINIC
Cosigned: 04/25/2005 09:02

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available) | VISTA Electronic Medical Documentation

[redacted]

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since completing his Inteferon treatments.

Temperature change was not as significant as it should have been but he is under some stress as he is job hunting. He did not reach his target of 93 degrees F. Heart rate was very steady throughout the session, respiration was average and he was able to decrease his rate to approximately 8 bpm for several minutes today. Peak-to-peak pulse amplitude decreased over the entire session. [redacted] stated that he was distracted from the music by sounds from within the room and sounds from the adjacent room and hallway.

Because of the high levels of pulse amplitude, peak-to-peak pulse amplitude, blood volume, steady heart rate and decrease in skin conductance, [redacted] displays the ability to relax and reduce his overall anxiety level significantly while doing his relaxation techniques.

Plan: [redacted] is to continue to practice all of his relaxation methods a minimum of 3 times daily. He needs to include them with his daily activities to help make them a habit. He understands the need for practice. RTC PRN

RTC: Will call if needed.

Signed by: /es/ , M. Ed.
PSYCHOLOGY TECHNICIAN 05/11/2005 14:52

Receipt Acknowledged by: /es/ , PhD
PSYCHOLOGIST, ADMINISTRATIVE 05/19/2005 15:18
DIRECTOR AMHC

Digital Pager: 62/504

05/05/2005 13:46 Title: PC PSYCHOLOGY
HCV SUPPORT GROUP NOTE
05/05/05
1000 - 1130

Group Facilitator:
, Ph.D., Psychology Fellow
, M.A., Psychology Intern

Genotype: 2
Length of TX: 15 weeks out

Today's group focused on:
Brief check in regarding patients' past week, status of their treatment, and how they are coping with treatment. There was much discussion on how treatment affects one's patience and irritability, thus affecting interactions with family and others. Discussed the need to remain cognizant of how treatment is affects

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one and discuss this with family and others. Conducted guided imagery exercise in session.

Affect and mood WNL. Moderate participation in today's group. No suicidal or homicidal ideation was indicated. Supportive of other group members.

[redacted] reported that during the past week he experienced two occasions where he felt somewhat depressed. He stated that he was able to challenge his negative thoughts and reframe his situation, thus elevating his mood and continuing to move forward. He reported that he continues to stay very active and revealed that he has applied for employment at the VA.

DX: HCV
Depression due to general medical condition (HCV) - improved

Plan:
Return to group in one week, 05/05/05.

Patient is not judged to be dangerous to himself or others at this time.

Signed by: /es/ , Ph.D.
Post Doctoral Fellow 05/05/2005 13:59

Digital Pager: 62319

Cosigned by: /es/ , Ph.D.
DIRECTOR, HEALTH PSYCHOLOGY CLINIC 05/13/2005 16:00

Digital Pager: 62 076

04/28/2005 14:03 Title: PC PSYCHOLOGY

HCV SUPPORT GROUP NOTE
04/27/05
1000 - 1130

Group Facilitator:
, Ph.D., Psychology Fellow
, M.A., Psychology Intern

Genotype: 2
Length of TX: 14 weeks out

Today's group focused on:
Group was open to allow patients to bring spouses, family members, and other supportive people in their lives. Discussion focused around the impact of HCV

[redacted]

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Comment: DOES NOT TAKE SHOT
Ok1-Pneumovax:
Patient declined pneumococcal vaccine at this time.
Comment: UNDER AGE RANGE
Ok1-Tobacco Use Screen:
Patient was screened for tobacco use at this encounter.
Patient reports no tobacco use during the past year (12 months).
Continued cessation encouraged.

/es/ LPN
LPN
Signed: 05/17/2005 10:45

TITLE: PC PSYCHOLOGY
DATE OF NOTE: MAY 12, 2005@16:58 ENTRY DATE: MAY 12, 2005@16:58:49
AUTHOR: ! EXP COSIGNER:
URGENCY: STATUS: COMPLETED

HCV SUPPORT GROUP NOTE
05/12/05
1000 - 1130

Group Facilitator:
, Ph.D., Psychology Fellow
, M.A., Psychology Intern

Genotype: 2
Length of TX: 16 weeks out

Today's group focused on:
from Vocational Rehab spoke to the group about opportunities available to veterans. Discussed the ways in which HCV treatment may limit veterans; they may need to seek out new employment opportunities. Group members also checked in, discussing physical side effects and the impact of HCV on relationships. The group also welcomed a new member.

Affect and mood WNL. Moderate participation in today's group. No suicidal or homicidal ideation was indicated. Supportive of other group members.

Pt states that he continues to volunteer at the VA, participate in the Upward Bound program, and to challenge his negative thoughts. He was active in giving advice to a new group member. He believes that HCV treatment is still impacting his life 4 months post-treatment.

DX: HCV
Depression due to general medical condition (HCV) - improved

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Plan:
Return to group in one week, 05/19/05.

Patient is not judged to be dangerous to himself or others at this time.

/es/
Psychology Intern
Signed: 05/12/2005 17:00

/es/ , Ph.D.
Psychologist
Cosigned: 05/13/2005 09:01

TITLE: MHC Biofeedback
DATE OF NOTE: MAY 11, 2005@14:13 ENTRY DATE: MAY 11, 2005@14:13:37
AUTHOR: EXP COSIGNER:
URGENCY: STATUS: COMPLETED

Length of Visit: 50 minutes
Arrived: On Time

Appearance: Alert, oriented x4, Neatly dressed, groomed, Cooperative, Calm
SI/HI: Patient did not report any SI/HI Ideation.

Session: #10

Diagnosis: Anxiety NOS

Type of Session:
BIOFEEDBACK
OTHER: Native American Indian Flute music

Temperature: Left
Sensor Placement: Left middle finger, distal pad

Pulse
Sensor Placement: Left index finger, distal pad

Skin Conductance
Sensor Placement: Left thenar eminence and hypothenar eminence

Respiration
Sensor Placement: Chest band across the xiphoid process

TESTING RESULTS:
Temperature L :Beginning temperature was approximately 89.9 degrees F, ending

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05/19/2005 13:37 Title: PC PSYCHOLOGY

HCV SUPPORT GROUP NOTE
05/19/05
1000 - 1130

Group Facilitator:
[illegible], Ph.D., Psychology Fellow
[illegible] M.A., Psychology Intern

Genotype: 2
Length of TX: 17 weeks out

Today's group focused on:
Discussing physical and emotional effects of HCV treatment. Group members "checked in" with one another and offered support. Discussed HCV treatment as an opportunity to make positive changes in one's life. Discussed the importance of continuing to engage in pleasurable and productive activities, even when activity level must be limited. Began discussion of stress management techniques. Group appears to have bonded and members are checking on one another.

Affect and mood WNL. Moderate participation in today's group. No suicidal or homicidal ideation was indicated. Supportive of other group members.

Pt states that he has gotten much of his strength & energy back following treatment, although he still struggles with lack of energy from time to time. Pt continues to volunteer at the VA. He was supportive of other group members today, offering advice and hope regarding the end of treatment. Brought fruit and vegetable snacks with him and ate those throughout group. [redacted] volunteered to call group members this week to remind them of the group's new meeting room.

DX: HCV
Depression due to general medical condition (HCV) - improved

Plan:
Return to group in one week, 05/26/05.

Patient is not judged to be dangerous to himself or others at this time.

Signed by: /es/
Psychology Intern 05/19/2005 14:20

Cosigned by: /es/ [illegible], Ph.D.
Psychologist 05/20/2005 13:36

PATIENT NAME AND ADDRESS (Mechanical imprinting, if available)

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/es/ , Ph.D.
Psychologist
Cosigned: 06/17/2005 14:04

Receipt Acknowledged By:
06/17/2005 15:24 /es/ , Ph.D.
Post Doctoral Fellow

TITLE: PC PSYCHOLOGY
DATE OF NOTE: JUN 09, 2005@14:55 ENTRY DATE: JUN 09, 2005@14:56:02
AUTHOR: EXP COSIGNER:
URGENCY: STATUS: COMPLETED

V SUPPORT GROUP NOTE
06/09/05
1000 - 1130

Group Facilitator:
, Ph.D., Psychology Fellow
M.A., Psychology Intern

Genotype: 2
Length of TX: 20 weeks out

Today's group format was open, allowing patients to discuss difficulties they have been experiencing as well as treatment accomplishments and successes. The group members were quite verbal in sharing their experiences. Much discussion focused around one group member's struggles during the past week and her decision about whether or not to continue treatment.

Affect and mood WNL. Moderate participation in today's group. [redacted] reports that he has been feeling good and has made progress on his home projects. No suicidal or homicidal ideation was indicated. Tried to be supportive of group members in distress; however, gave a good deal of advice during today's group.

DX: HCV
Depression due to general medical condition (HCV) - improved

Plan:
Return to group in one week, 6/16/05.

Patient is not judged to be dangerous to himself or others at this time.

/es/

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

[redacted]

VISTA Electronic Medical Documentation

[redacted]

Permanent Subcommittee on Investigations
EXHIBIT #9j

Progress Note

Printed On Oct 31, 2006

CHIEF,ORTHOTIC LAB
Cosigned: 06/23/2005 08:20

TITLE: PC PSYCHOLOGY
DATE OF NOTE: JUN 16, 2005@11:58 ENTRY DATE: JUN 16, 2005@11:59:11
AUTHOR: EXP COSIGNER:
URGENCY: STATUS: COMPLETED

HCV SUPPORT GROUP NOTE
06/16/05
1000 - 1130

Group Facilitator:
, M.A., Psychology Intern

Genotype: 2
Length of TX: 21 weeks out

Content of Group:
Discussed confidentiality and welcomed a new group member. Members "checked in" regarding their experiences coping with HCV and HCV treatment. Spent some time discussing communication in relationships and common gender differences in communication. Group members were very verbal during today's discussion. Next week's group is open for members to include supportive friends and family members.

Bright affect with upbeat mood. Moderate participation in today's group. [redacted] reports that he continues to volunteer 25 hrs per week, but he is too tired to look for a job. Supportive of other group members. No suicidal or homicidal ideation was indicated. [redacted] olunteered to call an absent group member to remind him of next week's open group.

DX: HCV
Depression due to general medical condition (HCV) - improved

Plan:
Return to group in one week, 6/23/05.

Patient is not judged to be dangerous to himself or others at this time.

/es/
Psychology Intern
Signed: 06/16/2005 12:09

PATIENT NAME AND ADDRESS (Mechanical imprinting, if available) | VISTA Electronic Medical Documentation

[redacted]

Permanent Subcommittee on Investigations
EXHIBIT #9k

Progress Note

Printed On Oct 31, 2006

Adequate lighting is available, Standing up slowly

DispositionUrgent Care -- LSU

/es/ RN
STAFF NURSE
Signed: 06/25/2005 19:56

06/25/2005 ADDENDUM STATUS: COMPLETED
2053 TORADOL 30 MG GIVEN IM IN THE RIGHT DELTOID AS ORDERED BY DR. VINCENT.

/es/ RN
RN
Signed: 06/25/2005 20:56

TITLE: PC PSYCHOLOGY
DATE OF NOTE: JUN 23, 2005@14:32 ENTRY DATE: JUN 23, 2005@14:32:22
AUTHOR: EXP COSIGNER:
URGENCY: STATUS: COMPLETED

HCV SUPPORT GROUP NOTE
06/23/05
1000 - 1130

Group Facilitator:
Ph.D., Psychology Fellow
, M.A., Psychology Intern

Genotype: 2
Length of TX: 22 weeks out

Content of Group:
Today's group format was open for members to bring family/friends who support them during treatment. Members "checked in" regarding their own progress and introduced family members. Discussed relationship issues. Also discussed the ways in which not being able to work can affect self-esteem, redefine roles in relationships, and can contribute to emotional distress. Group members discussed the benefits of coming to group and they were encouraged to seek social support as they go through treatment.

Bright affect with upbeat mood. Moderate participation in today's group. [redacted] continues to complain of fatigue. It was pointed out to him that his schedule is now quite busy and this may account for his fatigue. Supportive of other group members. No suicidal or homicidal ideation was indicated.

DX: HCV

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available) | VISTA Electronic Medical Documentation

[redacted]

Permanent Subcommittee on Investigations
EXHIBIT #91

Health Summary

Printed On Oct 31, 2006

Signed by: /es/ , Ph.D.
Post Doctoral Fellow 07/25/2005 18:32

Digital Pager: 62319

Cosigned by: /es/ , Ph.D.
DIRECTOR, HEALTH PSYCHOLOGY CLINIC 07/26/2005 11:14

Digital Pager: 62 076

07/19/2005 11:45 Title: PC GENERAL NOTE
Pt comes as walk in with pruiritic rash arms for few days likely starting after exposure to out door plants.O/E afebrile,VSS,lungs clear,heart RRR,skin show intense erythema flexure surfaces of upper and forearms with slight blistering and vesicles,no apparent signs of infection.Imp Contact Dermatitis.Plan: Start Methylprednisolone dose pack,Hydroxyzine tabs and Hydrocortisone topical application.

Signed by: /es/ , M.D.
Primary Care Physician 07/19/2005 11:49

07/14/2005 10:45 Title: PC PSYCHOLOGY
HCV SUPPORT GROUP NOTE
07/14/05
1000 - 1130

Group Facilitator:
, Ph.D., Psychology Fellow

Genotype: 2
Length of TX: 6 months out

Content of Group:
During today's group there was much discussion and questions regarding life after HCV treatment. Several of the members have just finished treatment and had questions regarding how they will feel and chances of HCV relapse. Patients who have completed treatment were encouraged to continue attending group while they make this transition. Discussed how patients have made a significant investment in their health and future and encouraged them to continue making positive health choices: abstain from alcohol and drugs; tobacco cessation; proper diet and exercise; etc.

Progress Note

Printed On Oct 31, 2006

FOR X-RAYS.

/es/
RN
Signed: 08/13/2005 19:21

TITLE: LIVER CLINC TELEPHONE NOT
DATE OF NOTE: AUG 11, 2005@17:00 ENTRY DATE: AUG 11, 2005@17:00:22
AUTHOR: EXP COSIGNER:
URGENCY: STATUS: COMPLETED

PATIENT HAD LAB DRAWN TO CHECK HEP C VIRAL LOAD 6 MONTH AFTER TREATMENT. LAB DRAWN 7/14/05. CALLED HOUSTON VA. RESULTS FAXED WHICH SHOWED "NO HCV RNA DETECTED." NOTIFIED PATIENT OF RESULTS. KEEP GI LIVER FELLOW APPT 8/18. PT VERBALIZED UNDERSTANDING OF PLAN OF CARE.

/es/ Pharm.D.
Clinical Pharmacy Specialist
Signed: 08/11/2005 17:02

TITLE: PC PSYCHOLOGY
DATE OF NOTE: AUG 11, 2005@12:36 ENTRY DATE: AUG 11, 2005@12:36:26
AUTHOR: EXP COSIGNER:
URGENCY: STATUS: COMPLETED

HCV SUPPORT GROUP NOTE
08/11/05
1000 - 1115

Group Facilitator:
Ph.D., Psychology Fellow
, MS, Psychology Intern

Genotype: 2a
Length of TX: 29 weeks out

Content of Group:
Patient's checked in and reported on the status of their treatment and general coping. Today patient's completed a pen and paper CDC Hepatitis Knowledge Assessment. After completion each question was reviewed and discussed. Discussed the importance of being knowledgeable about Hepatitis and how this directly relates to treatment as well as being able to talk with others about HCV status.

[redacted] reported that he is doing well and discussed his physical activity as

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available) | VISTA Electronic Medical Documentation

[redacted]

Permanent Subcommittee on Investigations
EXHIBIT #9n

[redacted]

Progress Note

Printed On Oct 31, 2006

well as active participation in VA programs such as volunteering and Up Ward Bound program.

Bright affect with upbeat mood. Moderate participation in today's group. Supportive of other group members. No suicidal or homicidal ideation was indicated.

DX: HCV
Depression - stable

Plan:
Return to group in one week, 08/18/05.

Patient is not judged to be dangerous to himself or others at this time.

/es/ , Ph.D.
Post Doctoral Fellow
Signed: 08/11/2005 12:40

/es/ Ph.D.
DIRECTOR, HEALTH PSYCHOLOGY CLINIC
Cosigned: 08/16/2005 10:11

TITLE: PC PSYCHOLOGY
DATE OF NOTE: AUG 04, 2005@12:26 ENTRY DATE: AUG 04, 2005@12:26:31
AUTHOR: EXP COSIGNER:
URGENCY: STATUS: COMPLETED

HCV SUPPORT GROUP NOTE
08/04/05
1000 - 1115

Group Facilitator:
Ph.D., Psychology Fellow
, MS, Psychology Intern

Genotype: 2a
Length of TX: 28 weeks out

Content of Group:
Today had new group member as well as addition of [redacted] as co group facilitator. Therefore each member introduced themselves and shared their treatment history and current progress. Majority of group was spent discussing new members adjustment to treatment and currents stressors. Group discussion

PATIENT NAME AND ADDRESS (Mechanical imprinting, if available)

[redacted]

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[redacted]

Consult Request

Printed On Oct 31, 2006

Inter-facility Information
This is not an inter-facility consult request.

Status: COMPLETE
Last Action: COMPLETE/UPDATE

Facility Activity	Date/Time/Zone	Responsible Person	Entered By
CPRS RELEASED ORDER	08/24/05 14:54	[redacted]	[redacted]
PRINTED TO NURS PRT-10 LASER	08/24/05 14:54		
COMPLETE/UPDATE Note# 6588192	08/29/05 10:49	[redacted]	[redacted]

Note: TIME ZONE is local if not indicated

TITLE: THERAPEUTIC RECREATION CONSULT
DATE OF NOTE: AUG 29, 2005@10:39 ENTRY DATE: AUG 29, 2005@10:39:32
AUTHOR: EXP COSIGNER:
URGENCY: STATUS: COMPLETED

INITIAL EVALUATION
PART I: PERSONAL INFORMATION

1. DX: Mood Disorder
2. AGE: 50
3. MEDICAL HX: Hep C, Depression, bad knees and left ankle

4. OCCUPATION: [redacted]
5. RESIDENCE: [redacted]
6. LIVING ARRANGEMENTS: lives in OKC

PART II: LEISURE HISTORY:

1. PREVIOUS LEISURE INTERESTS: painting, sketching, making things, reading, exercising and carving

2. CURRENT LEISURE INTERESTS: working with Upward Bound, exercise, work on the house, movies, reading, computers, volunteering and water aerobics

3. COMMUNITY INVOLVMENT: gets out daily

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

[redacted]

VISTA Electronic Medical Documentation

Printed at OKLAHOMA CITY [redacted]

Permanent Subcommittee on Investigations
EXHIBIT #9o

Consult Request

Printed On Oct 31, 2006

4. SOCIAL SUPPORTS: friends and people at the VA

5. PERCEIVED BARRIERS: health

PART III: ASSESSMENT:

1. LEISURE STRENGTHS: Veteran reports several previous and current leisure interests and states he has a good social support system.

2. LEISURE WEAKNESSES: Veteran reports problems with depression.

3. PATIENT GOALS: "join the stick class"

PART IV: TREATMENT PLAN
Veteran has been actively involved in the exercise clinic and would now like to expand his involvement with this clinic through the stick class.

Veteran will attend group Tuesday and Friday 0800-1000.

Veteran will engage in the stick making process and complete walking stick.

Veteran will actively participate in social interaction with peers at least three times each session.

/es/ CTRS
THERAPEUTIC RECREATION SPECIALIST
Signed: 08/29/2005 10:49
==========
========== END ==========

Current PC Provider:
Current PC Team: ORANGE TEAM
Current Pat. Status: Outpatient
Primary Eligibility: SERVICE CONNECTED 50% to 100%

Order Information
To Service: AUDIOLOGY CONSULT
From Service: ORTHOTICS LAB(HENDERSON) 1B100
Requesting Provider:
Service is to be rendered on an OUTPATIENT basis
Place: Consultant's choice
Urgency: Routine
Orderable Item: AUDIOLOGY CONSULT
Consult: Consult Request

PATIENT NAME AND ADDRESS (Mechanical imprinting, if available)

[redacted]

VISTA Electronic Medical Documentation

[redacted]

Consult Request

Printed On Oct 31, 2006

Inter-facility Information
This is not an inter-facility consult request.

Status: COMPLETE
Last Action: COMPLETE/UPDATE

Facility

Activity	Date/Time/Zone	Responsible Person	Entered By
CPRS RELEASED ORDER	08/17/05 16:01		
PRINTED TO REHAB PRT-04	08/17/05 16:01		
SCHEDULED	08/22/05 10:55		
veteran has appt. on 9-2-05			
COMPLETE/UPDATE	09/02/05 15:33		
Note# 6613940			

Note: TIME ZONE is local if not indicated

TITLE: PHYSICAL THERAPY OUTPATIENT CONSULT
DATE OF NOTE: SEP 02, 2005@15:18 ENTRY DATE: SEP 02, 2005@15:18:57
AUTHOR: EXP COSIGNER:
URGENCY: STATUS: COMPLETED

REFERRAL SOURCE: PC (Rafiq)
REASON: chronic LBP

DIAGNOSIS AND/OR SIGNS & SYMPTOMS: chronic LBP

SUBJECTIVE: Vet reports that his c/c is "spells like almost blacking out that started after numerous falls". Reports about a month ago his (L) knee and ankle gave out on him and he fell onto his left side and since that time has experienced a "subliminal" type sensation of dizziness that is getting worse and he is concerned with driving. Has had his ears checked and nothing and no infection, this cleared by ENT. Describes a sense of vertigo that happens with numerous activites but not any one thing tends to set this off. Denies any type of whiplash type injury but has had a hx of C4-5 cervical disectomy about 15 years ago? Denies any significant neck or low back pain but says that he is involved with Therapeutic Recreation 5 times a week here doing comprehensive abdominal ex's, stretches as well as he personally doing swimming ex at the local YMCA 5x/week. Says he has to exercise or "I can't move", weight has stayed about the same. PCP working up his current c/o's with xrays, ENT consult, has an appt. with Neuro in October.

Consult Request

Printed On Oct 31, 2006

OBJECTIVE: amb to dept. (I) using std cane, alert Ox4.
AROM and motor grossly WNL's, denies any radicular neck or LBP.
No nystagmus noted, (-) Rhomberg in standing.
Vet did report a few times of the dizziness during this appt. especially after getting up from supine position, rolling his trunk toward the (L) but no head/trunk consistent movement to set off these subjective c/o's.

EDUCATION (ITEMS DISCUSSED): discussed role of nervous as well as muskuloskeletal systems. Reviewed vets current ex program and encouraged continued compliance.

VETERAN RECEIVED 45 MINUTES OF PHYSICAL THERAPY INTERVENTION.

PT EVAL (97001)x1
EDUC (97535) x 2

ASSESSMENT: Vet without significant neck or back pain currently but chief complaint appears to be dizziness since falling approx 4 weeks ago. He is participating in appropriate ex group with TR for previous low back and neck pain, encouraged continued compliance. Agree with consult for Neurology to hopefully asses source of dizziness.

PLAN: discontinue PT, no identifiiable PT goals, encouraged continue compliance with TR exercise groups.

/es/
PHYSICAL THERAPIST
Signed: 09/02/2005 15:33

Receipt Acknowledged By:
09/02/2005 16:04 /es/ M.D.
Primary Care Physician
==========
========== END ==========

Current PC Provider:
Current PC Team: ORANGE TEAM
Current Pat. Status: Outpatient
Primary Eligibility: SERVICE CONNECTED 50% to 100%

Order Information
To Service: NEUROLOGY OUTPATIENT CONSULT
From Service: PC MOD
Requesting Provider:
Service is to be rendered on an OUTPATIENT basis
Place: Consultant's choice

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

[redacted]

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[redacted]

Health Summary

Printed On Oct 31, 2006

( )Discharge from Clinic
Veteran does agree with current progress report.

Signed by: /es/ MHR
ART THERAPIST 01/11/2006 11:28

01/05/2006 12:00 Title: PSYCHOLOGY - BEHAV MED
HCV SUPPORT GROUP NOTE
1000 - 1130

Genotype: 2a
Length of TX: Completed

Content of Group:

[redacted] attended HCV support group, as scheduled. Today's group was joined by 2 new members. Good group discussion and education regarding the physical and psychological effects of the HCV treatment. [redacted] continues to be an active and important participant in the group and its discussion. He is positive and encouraging of others and appears to benefit from the social interaction.

A:
Low suicide risk at this time
Axis I: Major Depressive Disorder
Axis II: Deferred
Axis III: HCV, in remission
Axis IV: Resolving problems with health
Axis V: GAF = 70

PLAN: RTC in one week.

Signed by: /es/ ., Ph.D.
PSYCHOLOGIST 01/23/2006 14:13

Digital Pager: 63-162

01/04/2006 11:13 Title: THERAPEUTIC RECREATION/CAT OPT PROGRESS NOTE
PART I: PROGRAM
ATTENDED:
( )Arts/Crafts
( )Creative Writing
( )Drumming

Progress Note

Printed On Oct 31, 2006

PT came today with c/o rash lower legs after he went out on his farm.The rash is pruiritit.
O/E afebrile,VSS,lungs clear,herat RRR,abd soft non tender,a maculopapular erythemaous rash lower legs with excoriations .The rash is consistent most likley with acute cantact dermatitis due to poison ivy exposure.
IMP Contact dermatitis
PLAN:Medrol dose pack and hydroxyzine.RT prn.

/es/ ' ¡, M.D.
Primary Care Physician
Signed: 07/13/2006 16:35

TITLE: LIVER CLINIC NOTE
DATE OF NOTE: JUL 13, 2006@14:21 ENTRY DATE: JUL 13, 2006@14:21:38
AUTHOR: EXP COSIGNER:
URGENCY: STATUS: COMPLETED

*** LIVER CLINIC NOTE Has ADDENDA ***

CC: F/U Hep C post-treatment

HPI: The pt is a 51 yo wm with a hx of Hep C, 2B diagnosed in 6/03. He was treated for 24 weeks with IFN/Ribavirin in 2004 and has experienced SVR, last HCV RNA undetectable in 12/05. He is convinced he is still experiencing liver complications/symptoms from the Hep C. He reports chronic fatigue,"liver pain", n/v, intermittent dark stools, and dark urine all of which he attributes to his liver. He states that his symptoms are "definitely due to hepatitis."
The pain is located in the R back under his ribs. It can occur any time day or night, but is dramatically worse with eating fatty foods which he avoids currently. The pain is not exacerbated by anything else and is relieved by increasing water intake. The black stools have been occurring for ~8 months intermittently. He also reports occasional scant BRBPR. He has been taking NSAIDs for knee pain for many months but has stopped them for the past 4 weeks. He denies hx of PUD, no prior endoscopy, no heartburn/dysphagia, no wt loss.

PMHx: Hep C, 2B- treated in 2004 with SVR
Hep B- cleared, now Surface ab positive
Syphilis

PSurgHx: multiple knee surgeries and L ankle repair
appendectomy

SocHx: quit smoking in 1980
no alcohol or drug use

Meds: tramadol

Health Summary

Printed On Oct 31, 2006

The right kidney measures 11.8 cm in length and the left kidney measures 10.7 cm in length. Both kidneys are sonographically normal. The spleen measures 12.9 cm in length and is unremarkable.

Impression:
1. Splenomegaly

EGD 08/06
Impression:
- Hiatus hernia.
- Papulous gastropathy. Biopsied.
- Normal examined duodenum.

Colonoscopy 08/06
Impression:
- Hiatus hernia.
- Papulous gastropathy. Biopsied.
- Normal examined duodenum.

ASSESSMENT:
51 yo wm with a hx of Hep C, 2B diagnosed in 6/03. Pt treated for 24 weeks with IFN/Ribavirin in 2004. Referred by PCP for complians of "liver pain". current pain is not related to Liver. Seems like secondary to spinal stenosis vs radicular pain vs muscular pain. Need to r/o above. However as clearly mentioned is not GI related.

PLAN/RECOMMENDATIONS:
1. F/u with PCP for w/u of radicular pain.
2. Continue pain medications as needed.

FOLLOW-UP:
Schedule patient for a follow-up appointment in this clinic:
None
Schedule the following tests prior to the next appointment:
None
Place the patient on the schedule for the following procedure(s):
None

Signed by: /es/ M.D.
RESIDENT PHYSICIAN 09/21/2006 15:29

Digital Pager: 327-9149

09/21/2006 15:35 Title: ADDENDUM
Ref: LIVER CLINIC NOTE Dated: 09/21/2006 14:48
Pt seen. Long discussion. His pain IS NOT liver related. He has radicluar pain at about t11 and hyperalgesia along that dermatome. Trigger point injections from anesthesiology might be helpful. He has fatigue which he ascribes to a side effect of interferon 18 months later even though we cured his virus. He is

Health Summary

Printed On Oct 31, 2006

clearly poorly conditioned cardiovascular wise and needs to start exeercising to reverse his fatigue rather than obsess about 18 months ago. he need not return to liver clinic.

Signed by: /es/ , M.D.
Staff Physician 09/21/2006 15:39

Analog Pager: 63-648
Digital Pager: 63-648

09/21/2006 13:05 Title: SPECIALTY CLINIC NURSING NOTE
Patient Age: 51

Vital Signs:

Blood Pressure:	115/73 (09/21/2006 13:04)
Pulse:	68 (09/21/2006 13:04)
Respirations:	18 (09/21/2006 13:04)
Temperature:	99 F [37.2 C] (07/13/2006 15:58)
Pain: (Scale 0-10)	0 (09/21/2006 13:04)
Height:	72 in [182.9 cm] (07/13/2006 15:58)
Weight:	264.9 lb [120.4 kg] (09/21/2006 13:04)
BMI:	36.0

List items the patient would like to discuss with the provider today:
Patient here for f/u, alert and ambulatory.

Signed by: /es/ W,RN
STAFF NURSE 09/21/2006 13:06

09/21/2006 09:50 Title: THERAPEUTIC RECREATION DC NOTE
Veteran has not participated in Therapeutic Recreation exercise clinic for over 90 days due to major medical change. As a result of lack of attendance or contact,
veteran is discharged from this clinic at this time. He will require a new consult from his PCP if he would like to attend in the future.

Signed by: /es/ CPRP
Recreation Therapist 09/21/2006 09:51

Analog Pager: 62599

09/20/2006 16:03 Title: PC GENERAL NOTE
51 years old wm veteran with hx of DJD s/p bilateral knee surgery with residual pain knee jts and hips,chronic pain L heel due to a detatched calcaneal spur comes to clinic today for f/u and requets a stronger pain medication as Tylenol#

[redacted]

[redacted]

October 16, 2006, 11:33
PAGE 1
SG-SSA-16

UNIT: 5G0000

APPLICATION FOR DISABILITY INSURANCE BENEFITS

I APPLY FOR A PERIOD OF DISABILITY AND/OR ALL INSURANCE BENEFITS FOR WHICH I AM ELIGIBLE UNDER TITLE II AND PART A OF TITLE XVIII OF THE SOCIAL SECURITY ACT, AS PRESENTLY AMENDED.

MY NAME IS [redacted]

MY SOCIAL SECURITY NUMBER IS [redacted]

MY DATE OF BIRTH IS [redacted]

I AM A CITIZEN OF THE UNITED STATES.

I DO NOT HAVE AN UNSATISFIED FELONY WARRANT(S).

I DO NOT HAVE AN UNSATISFIED FEDERAL OR STATE WARRANT(S) FOR VIOLATION OF PROBATION OR PAROLE.

I BECAME UNABLE TO WORK BECAUSE OF MY DISABLING CONDITION ON November 1, 2004.

I AM STILL DISABLED.

NO PREVIOUS APPLICATION HAS BEEN FILED WITH THE SOCIAL SECURITY ADMINISTRATION BY OR FOR ME.

MY U.S. MILITARY SERVICE DATES ARE AS FOLLOWS:

START DATE	END DATE
May 19, 1975	September 19, 1975

I AM NOT ENTITLED TO NOR DO I EXPECT TO BECOME ENTITLED TO A PENSION OR ANNUITY BASED IN WHOLE OR IN PART ON WORK AFTER 1956 NOT COVERED BY SOCIAL SECURITY.

THE SOCIAL SECURITY ADMINISTRATION AND THE STATE AGENCY REVIEWING MY CLAIM DO HAVE MY PERMISSION TO CONTACT MY EMPLOYER(S).

I HAVE NEVER MARRIED.

Permanent Subcommittee on Investigations
EXHIBIT #9t

[redacted] SG-SSA-16

I DO NOT HAVE ANY CHILDREN UNDER AGE 18; AGE 18-19 ATTENDING ELEMENTARY OR SECONDARY SCHOOL FULL TIME; OR AGE 18 OR OVER AND DISABLED BEFORE AGE 22 WHO MAY BE ELIGIBLE FOR SOCIAL SECURITY BENEFITS ON THIS RECORD. THIS INCLUDES CHILDREN WHO MAY OR MAY NOT BE LIVING WITH ME.

I UNDERSTAND THAT I MUST PROVIDE MEDICAL EVIDENCE ABOUT MY DISABILITY, OR ASSIST THE SOCIAL SECURITY ADMINISTRATION IN OBTAINING THE EVIDENCE.

I UNDERSTAND THAT I MAY BE REQUESTED BY THE STATE DISABILITY DETERMINATION SERVICES TO HAVE A CONSULTATIVE EXAMINATION AT THE EXPENSE OF THE SOCIAL SECURITY ADMINISTRATION AND THAT IF I DO NOT GO, MY CLAIM MAY BE DENIED.

I AUTHORIZE ANY PHYSICIAN, HOSPITAL, AGENCY, OR OTHER ORGANIZATION TO DISCLOSE ANY MEDICAL RECORD OR INFORMATION ABOUT MY DISABILITY TO THE SOCIAL SECURITY ADMINISTRATION OR TO THE STATE DISABILITY DETERMINATION SERVICES THAT MAY REVIEW MY CLAIM OR CONTINUING DISABILITY.

I AUTHORIZE THE SOCIAL SECURITY ADMINISTRATION TO RELEASE ANY INFORMATION ABOUT ME TO A PHYSICIAN OR MEDICAL FACILITY PREPARATORY TO AN EXAMINATION OR TEST. RESULTS OF SUCH EXAMINATION OR TEST MAY BE RELEASED TO MY PHYSICIAN OR OTHER TREATING SOURCE.

I AUTHORIZE THAT INFORMATION ABOUT MY DISABILITY MAY BE FURNISHED TO ANY CONTRACTOR FOR CLERICAL SERVICES BY THE STATE DISABILITY DETERMINATION SERVICES.

I AGREE TO NOTIFY THE SOCIAL SECURITY ADMINISTRATION OF ALL EVENTS AS EXPLAINED TO ME.

I AGREE TO NOTIFY THE SOCIAL SECURITY ADMINISTRATION:

-- IF MY MEDICAL CONDITION IMPROVES SO THAT I WOULD BE ABLE TO WORK, EVEN THOUGH I HAVE NOT YET RETURNED TO WORK.

-- IF I GO TO WORK WHETHER AS AN EMPLOYEE OR A SELF-EMPLOYED PERSON.

-- IF I APPLY FOR OR RECEIVE A DECISION ON BENEFITS UNDER ANY WORKERS' COMPENSATION LAW OR PLAN (INCLUDING BLACK LUNG BENEFITS FROM THE DEPARTMENT OF LABOR), OR OTHER PUBLIC BENEFIT BASED ON DISABILITY.

-- IF I AM CONFINED TO A JAIL, PRISON, PENAL INSTITUTION, OR CORRECTIONAL FACILITY FOR CONVICTION OF A CRIME OR I AM CONFINED TO A PUBLIC INSTITUTION BY COURT ORDER IN CONNECTION WITH A CRIME.

THE ABOVE EVENTS MAY AFFECT MY ELIGIBILITY TO DISABILITY BENEFITS AS PROVIDED IN THE SOCIAL SECURITY ACT, AS AMENDED.

I AGREE TO NOTIFY THE SOCIAL SECURITY ADMINISTRATION IF I BECOME ENTITLED TO A PENSION OR ANNUITY BASED ON EMPLOYMENT AFTER 1956 NOT COVERED BY SOCIAL SECURITY. OR IF SUCH PENSION OR ANNUITY STOPS.

[redacted] SG-SSA-16

BENEFITS TO A STEPCHILD TERMINATE THE MONTH AFTER THE MONTH THE WORKER AND THE STEPCHILD'S PARENT OBTAIN A FINAL DIVORCE. THEREFORE, IF A STEPCHILD BECOMES ENTITLED ON MY RECORD, I AGREE TO NOTIFY SSA IF THE STEPCHILD'S PARENT AND I SUBSEQUENTLY DIVORCE.

MY REPORTING RESPONSIBILITIES HAVE BEEN EXPLAINED TO ME.

REMARKS:
I HAVE REVIEWED MY EARNINGS STATEMENTS AND THEY ARE CORRECT AS POSTED. THE EARNINGS LIMITS HAVE BEEN EXPLAIN TO ME AND I UNDESRTAND IT. ALL MY QUESTIONS REGUARDING THIS LIMITS HAVE BEEN ANSWERD. I DO NOT EXPECT TO EARN OVER MY LIMIT. I WAS NOT ABLE TO WORK DUE TO MEDICAL PROBLEMS FROM 1990 TO 1999.

I KNOW THAT ANYONE WHO MAKES OR CAUSES TO BE MADE A FALSE STATEMENT OR REPRESENTATION OF MATERIAL FACT IN AN APPLICATION OR FOR USE IN DETERMINING A RIGHT TO PAYMENT UNDER THE SOCIAL SECURITY ACT COMMITS A CRIME PUNISHABLE UNDER FEDERAL LAW BY FINE, IMPRISONMENT OR BOTH. I AFFIRM THAT ALL INFORMATION I HAVE GIVEN IN CONNECTION WITH THIS CLAIM IS TRUE.

[redacted]

[redacted]

SIGNATURE _____ _____ DATE_____

, M.D.
[redacted]

CLAIMANT: [redacted]
SSN: [redacted]
CASE NO.: 121206C
PHYSICIAN: , M.D.
LOCATION: [redacted]
DATE OF EXAM: December 12, 2006
TYPE OF EXAM: Comprehensive Internal Medicine Examination

SOURCE OF HISTORY: The patient.

REVIEW OF RECORDS: VA Hospital.

CHIEF COMPLAINT: Chronic bilateral knee pain, left ankle pain, neck pain, and low back pain.

HISTORY OF PRESENT ILLNESS: [redacted] a 52-year-old, white male who has had numerous bilateral knee surgeries. He had surgeries in 1987, 1988, 1989, 1990, 1991, and 1992. In 1992 he also had a tendon repair of the left ankle. In 1994 he had an automobile accident and had an anterior cervical diskectomy.

He also has had an injury to his lower back.

At the present time, the patient has chronic pain in both knees and the left ankle He ambulates with crutches. He states that he can ambulate around the house without his crutches.

He has chronic pain in his left ankle with standing and walking.

He has chronic pain in his neck and back. He wears a TENS unit. He has pain in the arms and hands and legs and feet and has decrease sensation in all of his extremities.

PAST MEDICAL HISTORY: Injury to wrists and head, appendectomy.

REVIEW OF SYSTEMS: Decreased vision, difficulty hearing, syphilis, peptic ulcer disease, hepatitis B and C, and chest pain; I filled out a chest pain questionnaire.

EDUCATION: Fourteen years.

SOCIAL HISTORY: Single, no children. He does not smoke and does not drink alcohol.

WORK HISTORY: Sales, construction, store manager, bookkeeping, garage worker, telemarketer. His last job was about two years ago working in retail sales at Burlington Clothing.

MEDICATIONS: Hydrocodone, ibuprofen, tramadol, Lithopram, etodolac.

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[redacted]
December 12, 2006
[redacted]
Page Two

ALLERGIES: None.

PHYSICAL EXAMINATION:

GENERAL APPEARANCE: [redacted] white male who appears to be about his stated age. He is alert and oriented. He answers all questions appropriately. He has no cognitive disorder. He is unkept and malodorous. He has chronic pain behaviors.

HEIGHT AND WEIGHT: 6', weight 250 pounds.
BLOOD PRESSURE: 130/84.
PULSE: 72 and regular.
RESPIRATION: 16 and regular.
SNELLEN EYE EXAM: Without glasses right eye and left eye 20/200. With glasses right eye and left eye 20/20.

HEENT: The tympanic membranes and otic canals are clear. The pharynx is clear. The pupils react to light. I could not visualize the fundi. The neck has no nodes. The thyroid is not enlarged.

CHEST: The chest is clear to auscultation.

CARDIOVASCULAR SYSTEM: The heart has a regular rhythm without murmur. There are no carotid bruits. Peripheral pulses are normal. There is no pretibial edema.

ABDOMEN: The abdomen is obese and nontender. The liver is not enlarged.

SPINE: The cervical spine has extreme loss of range of motion in all planes. There is tenderness bilaterally.

The lumbar spine has extreme loss of range of motion in all planes. There is tenderness bilaterally. He is wearing a TENS unit.

EXTREMITIES/RANGE OF MOTION: The patient restricts range of motion in his shoulders to the point that the exam could not be performed. He exhibits chronic pain with attempts to manipulate the shoulders. The elbows, wrists, and fingers have normal ranges of motion. There is a 3/5 grip in each hand which is normal.

I could not do range of motion testing on the hips and knees. The patient complained of extreme pain with movement of his legs. He was able to flex his knees about 10 to 20 degrees. He was able to sit with his legs over the edge of the table at 90 degrees. He has numerous surgical scars on both knees. The ankles have normal ranges of motion.

NEUROLOGICAL EXAM: Cranial nerves II through XII are intact. Cerebellar and motor functions are normal. Deep tendon reflexes are equal. There is stocking decrease sensation of the lower

extremities and sleeve/glove decrease sensation of the upper extremities.

MOTOR STRENGTH/MUSCLE TONE: The patient has adequate muscle strength and tone in the upper and lower extremities insofar as it could be tested.

STATION AND GAIT: The patient could not heel, toe, or tandem walk. He ambulates in the hallway at about half the normal pace and uses crutches. He can ambulate without his crutches.

CLINICAL IMPRESSION:
1) S/P multiple bilateral knee surgeries.
2) Chronic bilateral knee pain secondary to #1.
3) S/P surgery on left ankle with chronic tendinitis/arthritis of the left ankle.
4) S/P surgery on cervical spine with chronic neck pain.
5) Chronic low back pain.
6) Hepatitis B and C by history.
7) Chest pain of unknown etiology.

CLINICAL ASSESSMENT: The patient has normal speech and hearing. He has normal cognitive function. He has adequate dexterity of his hands and fingers and adequate grip strength. He has extreme loss of range of motion of his neck and back. I could not do range of motion testing on his shoulders, hips, or knees. He ambulates in the hallway at about half the normal pace. He ambulates with forearm crutches. He can ambulate without the crutches. The patient has chronic pain behaviors.

I observed the patient in the parking lot. He drives a small traditional Volkswagen. He was able to get into the Volkswagen without difficulty. This required flexing his knees to at least 90 degrees. He fastened his seat belt and turned his head 90 degrees to the right to look over his right shoulder to back out. He had no trouble using his left shoulder to slam the car door.

[illegible], M.D.
df

Social Security Administration SSA-4268

EXPLANATION OF DETERMINATION

NAME OF CLAIMANT	W/E's NAME (IF CDB or DWB)	SSN	CLAIM TYPE
[redacted]		[redacted]	**DIB**

52 yr old male c/o knee problems, hepatitis C & mental problems. He has the residual functional capacity to lift/carry 20 lbs occasionally, 10 lbs frequently & to stand/sit/walk 6 hrs in an 8 hr workday. One of his past relevant jobs was as a [redacted] where he lifted 50 lbs occasionally. He cannot do the job as he describes it. In the DOT the job is Sales Attendant, 299.577-010, which carries a light strength rating. He has the residual functional capacity to do this job as it exists in the national economy.

CFS/cfs

Permanent Subcommittee on Investigations
EXHIBIT #9v

SOCIAL SECURITY NOTICE
NOTICE OF RECONSIDERATION

From: Social Security Administration

Date: December 21, 2007

[redacted]

Claim Number: [redacted]
Claim for: DIB

Upon receipt of your request for reconsideration we had your claim independently reviewed by a physician and disability examiner in the state agency which works with us in making disability determinations. The evidence in your case has been thoroughly evaluated; this includes the medical evidence and the additional information received since the original decision. We find that the previous determination denying your claim was proper under the law. Attached to this notice is an explanation of the decision we made on your claim and how we arrived at it. The reverse of this notice identifies the legal requirements for your type of claim.

ABOUT THE DECISION

Doctors and other trained staff looked at your case and made this decision. They work for your State but used our rules.

Please remember that there are many types of disability programs, both government and private, which use different rules. A person may be receiving benefits under another program and still not be entitled under our rules. This may be true in your case.

In addition to the reports we told you about in our first letter, the following reports were used to decide your claim.

[redacted]NS evidence received 09/24/2007
MD evidence received 11/26/2007
DO (OKC) evidence received 12/06/2007
INFORMATION SUBMITTED BY YOU IN FILE evidence received 12/3/2007

We have determined that your condition was not disabling on any date through 03/31/05, when you were last insured for disability benefits. In deciding this, we studied your records, including the medical evidence and your statements, and

[redacted]

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considered your age, education, training and work experience in determining how your condition affected your ability to work.

You said that you were unable to work because of acquired immune deficiency syndrome, joint pain with neuropathy, asthma, allergies and anxiety.

The medical evidence shows the following: Although you sometimes had problems with asthma and allergies, you were able to breathe adequately most of the time. While your joint pain and neuropathy caused discomfort, you could still move around and walk well enough to do some types of work. Your anxiety kept you from doing stressful and complex work, but you could do simple, routine work. Although you had tested positive for HIV, the medical evidence does not show you had any disabling effects. Medical evidence does not show any other impairments which kept you from working on or before the date you were last insured for disability benefits.
We realize that your condition kept you from doing any of your past work, but it did not keep you from doing other work which was less demanding. Based on your age, education and past work experience, you could have done other work prior to the date you were last insured for disability benefits.

IF YOU DISAGREE WITH THE DETERMINATION

If you believe that the reconsideration determination is not correct, you can request a hearing before an administrative law judge of the Office of Hearings and Appeals. If you want a hearing, you must request it no later than 60 days from the date you receive this notice. You may make your request through any Social Security office. As part of the appeal process, you also need to tell us about your current medical condition. We provide a form for doing that, the Disability Report – Appeal. You may contact one of our offices or call 1-800-772-1213 to request this form. Or, you may complete the report online at http://www.socialsecurity.gov/disability/hearing. Read the enclosed leaflet for a full explanation of your right to appeal. Read the enclosed leaflet for a full explanation of your right to appeal.

IF YOU WANT HELP WITH YOUR APPEAL

You can have a friend, lawyer or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security Office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due benefits to pay toward the fee.

NEW APPLICATION

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. You might lose benefits if you file a new application instead of filing an appeal. Therefore, if you think this decision is wrong,

[redacted]

you should ask for an appeal within 60 days.

This decision refers only to your claim for benefits under the Social Security Disability Insurance Program. If you applied for other benefits, you will receive a separate notice when a decision is made on that claim(s).

If you have questions about your claim, you should get in touch with any Social Security office. Most questions can be handled by telephone or mail. If you visit an office, however, please be sure you have this notice with you.

In addition, you are not entitled to any other benefits based on this application. If you have applied for other benefits, you will receive a separate notice when a decision is made on that claim.
This decision refers only to your claim for benefits under the Social Security Disability Insurance Program. If you have not already received a decision about your payments under the Supplemental Security Income Program, you will receive a separate notice shortly.

Summarized below are legal requirements for the various types of disability claims:

DISABILITY INSURANCE CLAIM

To be considered disabled, a person must be unable to do any substantial gainful work due to a medical condition which has lasted or is expected to last for at least 12 months in a row. The condition must be severe enough to keep a person from working not only in his or her usual job, but in any other substantial gainful work. We look at the person's age, education, training and work experience when we decide whether he or she can work.

DISABLED WIDOW (WIDOWER) CLAIM

A widow, widower, or surviving divorced wife (age 50-60) must meet the disability requirement of the law within a specified 7-year period. A person may be considered disabled only if he or she has a physical or mental impairment that is so severe as to ordinarily prevent a person from working. The disability must have lasted or be expected to last for a continuous period of at least 12 months.

CHILDHOOD DISABILITY BENEFITS

Childhood disability benefits may be paid to a person age 18 or older if the person has a disability which began before age 22 or within 84 months of the end of an earlier period of childhood disability. The condition, whether physical or mental, must be severe enough to keep a person from doing any substantial gainful work. We look at the person's age, education and previous training when we decide whether he or she can work. In addition, the condition must have lasted or be expected to last for at least 12 months in a row.

Ramona Schuenemeyer
Regional Commissioner

DL/dl

Enclosure:
SSA Pub. No. 70-10281
Form SSA-L928-U2
CC: [redacted]

DO 783

[redacted]

(The following is a transcript in the hearing held before Peter M. Keltch, Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, on April 29, 2009, at Oklahoma City, Oklahoma in the case of [redacted] Jr., Social Security Number [redacted] The Claimant appeared in person and was represented by [redacted]y. Also present was Medical Expert, [redacted])

(The hearing commenced at 11:15 a.m., on April 29, 2009.)

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

ALJ: This is the case of [redacted] Are you [redacted]

[redacted]

CLMT: Yes, sir.

ALJ: [redacted] my name is Peter Keltch and I'm a United States Administrative Law Judge. I'm here today to hear your case. You have filed two claims technically. I find some people don't even realize they have filed two claims. One of your claims is for Disability Insurance because when you work you paid in FICA or some form of tax and some of that money went into the Disability Insurance Trust Fund. And so you have paid for certain coverage of Disability Insurance. Unfortunately, the difference in your case for the most is, if I'm reading the outside of the folder correctly, you haven't paid in for quite a while, let's see, look here, miscellaneous on disability, I'm showing here the date of last insured of March 31st of 2005. So, you're not currently insured from Disability. There's a, let me see, there's a requirement that you pay in a certain number of quarters and that when you become -- when you get down to the point that out of the last 20 quarters you had more non-paid quarters than paid quarters and your insurance expires. So, you apparently stopped paying in the first quarter in 2000. I don't have any record of any payments in and

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then that means that your insurance expired March 31st of 2005, which is fine if you are disabled as of the date you said, which was April 15, 2003. So, if you're actually disabled in '03, then you still had coverage. However, if I ever find that you were not disabled until 2006, '07, '08, '09, sometime later, then you wouldn't have any insurance coverage. So, that's a technical question on the coverage. SSI is the second claim. That's Supplemental Security Income. That is available for people who don't even have any insurance, or if they do have insurance it's not enough to bring them up to the minimal level and Congress has established a minimal level of income, which should be received by the agent and the disabled. And so, people are short of that and have low resources then they may get a Supplemental Security Income. It may be 100 percent of that amount. It may be something less than 100 percent of that amount to get up to that amount. Just like I'm say Supplemental. And if you're not covered by insurance and I find that you're disabled after the insurance ran out, you get 100 percent of the Supplemental Security Income up to that same level. So, these are technical coverage questions, but having gone through all that to explain to you that there are two questions, two claims with different things involved, one thing they have in common is the definition for Disability. You have to be disabled under our Rules before you can be considered disabled, either under the insurance program or the SSI program. And that apparently is the question. You applied and they looked at everything and said no, you're not disabled and turned down your claim. Then you don't agree with that and therefore you have requested a hearing and that this

stage I will start over. I will look at all the records they looked at. I'll look at all the records, which may have been added to the file since then. In fact, sometimes I get records after the hearing and I look at those. I listen to the testimony. I didn't have any testimony. This is the first time you've been able to tell your story personally to someone who actually has the authority to decide your case.

CLMT: Yes, sir.

ALJ: And I'm an independently motivated Administrative Law Judge. I don't have a quota. I don't have any, you know, like every now and then they talk about traffic tickets, you know, cops supposedly have a quota, the issue so many tickets and so on. I don't have anything like that.

CLMT: Yes, sir.

ALJ: I just decide these cases one by one the way I think they ought to be decided.

CLMT: Yes, sir.

ALJ: Okay. I haven't decided your testimony. I have an expert witness at the table with you. He's a vocational expert. He's an expert on jobs. So, he can tell me what it took to do your past work. He can tell me if you have skills from that work and so forth. And then I'm going to have a medical expert on the telephone, Dr. [illegible] (phonetic) whose an internal medicine doctor in Oklahoma City and he has examined the medical records we were able to send to him and he's going to tell me what he found with them. So, it's a whole new mix of evidence. So, as you can see I just start over.

CLMT: Yes, sir.

ALJ: I just start over and look at the whole picture. Now, the first question is the admissibility of the proposed Exhibits. We have an Exhibit file in electronic form and the proposed Exhibits are up to 4A, 15B, 4D, 14E and 15F and then today there is some more medical from the [redacted] in New Castle, which has been brought in and my doctor won't have seen this. I don't know whether it will affect his testimony if he were to see or not see it. There's nothing about it, I'll tell him about it if I see anything in here that means something to me and we'll just have to see how that goes. Also, I have an appointment for a different representative. Let's see, the medical will go into the F's, so that will be 16F but we have a new representative and it appears that [redacted] is in the same office as the one that we already had on the file, which is Mr. Higgins.

CLMT: Yes, sir.

ALJ: And that's an interesting thing. I've never seen that. Waiver of the Fee you signed that and that I waive my right to charge and that you emphasize that Mr. [illegible] is to remain beneficiary if there is an attorney fee.

ATTY: Yes, sir. We haven't had any trouble with it yet. There may be different way to do it though.

ALJ: I just never had seen it. I don't know. A lot of times we'll just have a deal where they -- we get a whole new 1696 and a whole new P Agreement and the other one says well technically he withdraws. Actually, up here -- oh I see, I'm appointing and it says

the name of the principle representative. My main representative -- I think this works. [illegible] is my main representative. I think that works. Is he an associate or a partner in the same firm?

ATTY: Just in the same firm. I do most of his hearing now, actually.

ALJ: Okay. Where is Ingram, Texas?

ATTY: It's right next to Fort Worth, Texas, a little bit West.

ALJ: A little West?

ATTY: Yes.

ALJ: Okay. I've been to Fort Worth many times and we also cover Wichita Falls.

ATTY: Oh really.

ALJ: Out of this office, but Ingram didn't ring a bell with me.

ATTY: It's -- I mean its just West.

ALJ: You probably go into Fort Worth then for any hearings?

ATTY: Yes, sir. [redacted].

ALJ: Well, if you ever get any in the area served by Wichita Falls, then you'll end up seeing one of us. We're trying to get a permanent site down there now so that we can use our video equipment for remote teleconferencing in Wichita Falls, but we don't have it yet. So, we get to drive down to Wichita Falls and go to the Federal Building and we have a really rotten room on the 4th floor next to the alley somewhere, but we go down there in person to hear things in Wichita Falls so I, you know, I've heard of Verna and then I've heard of Childress and I've heard of --

ATTY: Sure.

ALJ: -- what's the town directly south? It's kind of on the South edge, there's a town of some size there and we have people from, that's that, you know, it's provided that by what the Social Security District Office covers. So, that area of the District Office gets attached to a hearing office. Well, anyway I digress. Let me call the doctor. Well, no, first of all we were admitting all these and then you have a brief and technically that will be a part of Exhibit, or be part. So, we have all those things to add to the file and you don't have any objection, I guess to any of the proposed Exhibits?

ATTY: No, sir. I did have one question for you.

ALJ: Yes.

ATTY: I'm just curious as to which Exhibit Family Medicine is? They weren't really labeled on my CD.

ALJ: Family Medicine. Okay. I have a Family Practice, 14F, which covered October 24, 2008 to February 17, 2009.

ATTY: That's the one. Thank you.

ALJ: 14F. And then we have a 15F, which is [redacted] M.D., one page 4/22/2009.

ATTY: Yes, sir.

ALJ: I suppose that could be a letter.

ATTY: It sure is.

ALJ: I think it's an abdominal study. It's like , M.D. Family Practice. All right. We'll admit everything then.

(Exhibits, previously identified, were received into evidence and made a part of the record thereof).

ALJ: Let me get the doctor on the phone so I can swear everybody in. You remember on Animal Farm all animals were equal except pigs

were more equal. All of us are equal except doctors. They're more equal.

ME: Hello?

ALJ: [redacted] this is Judge Keltch.

ME: Okay.

ALJ: We're calling on the case of [redacted]

ME: Okay.

ALJ: And I'm getting ready to swear in the witnesses. Do you have any objection to taking an oath? Is the other gentleman going to testify?

ATTY: No, sir.

ALJ: All right. If all of you will take the oath of the witness at the same time?

(The Claimant, [redacted], having been first duly sworn, testified as follows:)

EXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE:

Q Let me ask you some routine things [redacted]. [redacted]. Now your address is now, is it still [redacted]?

A Yes, sir.

Q Is the phone number still [redacted]

A Yes, sir.

Q This says you were born [redacted], no strike that, [redacted], [redacted]?

A Yes, sir.

Q And I guess that hasn't changed?

A No.

Q And so you're now 33?

A Yes, sir.

Q You had a high school education and then it says also another year of college?

A Yes, sir.

Q Where was that?

A I went to [redacted] and then [redacted]

Q And then you went to [redacted] Did you complete that?

A Yes, sir.

Q Did you become a [redacted]

A Yes, sir.

Q Do you have a license?

A Yes, sir.

Q All right. And so you have that specialized training? I assume that the college was general subjects?

A Yes.

Q You didn't complete a degree --

A No, sir.

Q -- or certificate there?

A No, sir.

Q All right. Is that what you've been doing most of your work career being a [redacted]

A Until I got ill, yes.

Q Do you still do -- did you do [redacted] and so on?

A No.

Q No? Okay. Now, let's see. You live in an apartment? How many are in the household?

A Two.

Q And they are who?

A Myself and my friend [redacted]

Q [redacted] who is with you today?

A Yes, sir. He's who takes care of me.

Q Do you have income now from any source?

A No.

Q How are you living?

A He supports me. He buys my medications.

Q If you get your benefits do you and he have an agreement that you're going to pay him back some money?

A Yes, sir.

Q I'll tell you a little secret about that. If you go in, if you're approved and they say now where've you been living and if you say I've been having a free apartment, they say oh well we'll deduct a third off of your benefits because you didn't have any rent to pay. But if you go in and say I've been living with a friend and I'm going to pay him back, then they give you the full check. I mean it's between you and him to pay him back if he's been paying the rent and bills.

A Yes, sir.

Q Just a little trick to remember.

A Yes, sir.

Q If you go in there and say well I've just been provided a place to stay and they say oh well for Supplemental Security Benefits then you don't get it, or the check.

A Yes, sir.

Q You knew that didn't you?

ATTY: Yes, sir.

Q So, I'm assuming you have an agreement probably do that?

A Yes, sir.

Q All right. We have findings alleged and found by the State Agency, symptomatic HIV infection. Also, they noted an anxiety related disorder. I reviewed the folder and from what I saw I felt that it would be helpful to have a medical expert look over this record and let me know what was going on. But first, let me ask you [redacted], do you know how many Exhibits you received, because I think there's some here you may not have received?

ME: I have generally, let me look, I've got through -- well, I've gotten everything permanently, I think through 13F.

ALJ: 13F?

ME: I believe that's right. I'm looking.

ALJ: Well, 14F --

ME: I've got 14F, yes.

ALJ: -- 14F is the records from [redacted], October 24th '08 to February 17th '09 and that's a doctor here in Oklahoma City, [redacted] and he says he's treating the peripheral neuropathy. I think he's a family practice doctor, is that right?

CLMT: No, he is a pain management doctor.

ALJ: He's a pain management doctor, okay. Well, the record says Family Practice, so that's why I said Family Medicine. And there's 14 pages there of his office notes. I'm screening through it to see if I

see any test results or anything. He says chronic pain syndrome and neuropathy. It said he was getting some improvement from treatment. That was back in January of this year on the pain, but apparently is still constant and difficult to describe, shooting, stabbing, burning and needles. And he was refilling his medication and he was having bad side effects from the medication, dizziness, fatigue, nausea and vomiting. Compliance good, takes the medication as directed, follows up as corrected, but he was agitated and anhedonia, decreased interest in socializing affect and a tendency towards indeciveness and depressed mood. The last item would be, nope it's not in the other one. Sometimes I go from oldest to newest and then sometimes from newest to oldest. Let me see, the last thing would be February 17th of this year, peripheral neuropathy, and then we have a letter from the doctor, which is 15F, and it says Family Practice, Drive in Oklahoma City and it's a short letter and it's from April 20th, just a little over a week ago. Regarding the above patient, he's been a patient of mine for the last six months. He has a severe disabling form of, it's says performed neuropathy, I think that should be peripheral, but anyway, neuropathy related to HIV. I understand that he has applied for Disability and agree that he is an acceptable candidate and is not capable of working at this time. So, that's a conclusion that this treating doctor has shared with us. And then I have some 24 pages of records from the Clinic in Newcastle, which have just been submitted and I'm not -- you don't have them, so we're not going to go into a lot of that at this time.

(The Medical Expert, [redacted], having been first duly sworn, testified as follows:)

EXAMINATION OF MEDICAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q Let me hear from you doctor as to what you did find and what you were provided with respect to severe medically determinable impairments of [redacted]

A Okay.

Q Go right ahead.

A As a matter fact Judge, I've been looking while you were talking through things and I do not have anything beyond 12F.

Q 12F?

A Yeah. The index on this thing is not in correct order, so I had to go through the whole document, A, B, C, D and E, there wasn't an F.

Q Let me tell you then, 13F is another one page letter. This is from the ' Clinic in Newcastle, it's signed by , M.D. He says, to whom it may concern, [redacted] has been a patient of mine since 2004. He has severe, he has severed, I think that means suffered, from severe depression, as well he has the complication of HIV disease, which has led to multiple other difficulties. He is on a large number of medications, many of which have side effects. He has severe peripheral neuropathy from the AIDS disease or the medications. He suffers from many abdominal complaints and chronic diarrhea, as well as fatigue secondary to the medications as well. It is my opinion he cannot maintain gainful employment, nor would he be capable of sitting for additional training or education. If I can be of any further service, please contact me here at the [redacted] I guess that's Newcastle, Tuttle and where?

CLMT: In Moore.

ALJ: Moore is the third city?

CLMT: I think.

ALJ: Mustang, could maybe. I don't know what the Tri Cities are, you got me. I know Newcastle and Tuttle are not far apart. So, you've got me. It's a catchy thing Tri City.

BY ADMINISTRATIVE LAW JUDGE:

Q But anyway, all right doctor with that additional -- that's another conclusionary letter from Dr. _ who's a family doctor who's treated me since I was born.

A Okay. Well, in here I'm looking at -- I looked at all the things you told me with the diagnosis of AIDS. If you go by the manual, basically AIDS is a disease that becomes a cycle when you start having complications. Because most of the times in the manual have to do with secondary infections, stapholaxoid and all of them comes close to what I saw through the number was 12F, is that he has a lot of diarrhea and that is one of the things the listings call for diarrhea for one month or longer resistant to treatment. The Dr. _ _ (Phonetic) who did his Social Security evaluations said basically, it just says that has no authorization for major complications and there's both physical exams from Dr. (Phonetic) saying peripheral neuropathy and that is basically current because I have not gone through this looking for it. He does have Dr. _ has done in during his times, which was done in July of 2004 and approximately at that time, he had basically had blood work done in C4 was 18 and his CD8 was 49 and this is high. Normally, that you have

acne disease when you go help yourselves which are CD4's are high and as the disease progresses you tend to get lower and lower and 18 is normal, 49 was the CD8 and that's when they reset over 100,000 doctors of the virus would share. Would share basically means that they're going to just fails are close to more mild. The only other real sensation to that here is Dr. gave him a prescription on 8/16/07 for a walker, which, you know, goes with the severe neuropathy. That is not really a physical exam that shows what his - what that means by severe neuropathy. Though what they haven't talked about a walker basically, of course, if you read the manual, that severe neuropathy means difficulty getting around and they said he was able to walk. As a matter fact, when doctor, of course this was two years ago, when Dr. (Phonetic), he says he's able to walk around without a walker. So, you know, we really don't know that except there's a note in here that Dr. had given him a prescription for a walker to help with his pain and mobility. And he's obviously having pain and I think he's honestly got some active disease with an I24 [sic] and not a viscosity 8 and not a C4. So, in other words I'm not in touch when they're saying the guy is disabled because of HIV, which is fluky although he said it. He just doesn't have the -- he's had a lot of infections most of them have responded to treatment. He said, for example, he said Bell's Palsy, which is usually caused by a virus and that clears up this is what is not good. Now, Dr. again and I looked up that times when he had -- he describes severe fatigue and diarrhea and fatigue is almost every single visit in Dr. 's place. On 4/19/07, he had diarrhea,

9/01/06, one 11/10/06, 9/16/05 he had diarrhea and then so basically he's had diarrhea multiple times where, and you know diarrhea in the colon is a certain amount. And I really think that usually the cell count has to do with at least probably disabled. And I think you'd have to pay attention to what the two doctors said about his ability to perform and I don't think he's able to perform with what he has. Not work again bears a close resemblance to what Dr. saying that he neither could raise his arms very much and that would impair his inability to be a hairdresser.

Q Well, he comes in today with his walker and when was it prescribed by the doctor? When was he given a prescription for it?

A says 8/16/07 in other words two years ago.

Q When did you have to start using an assisted device, a walker a cane or something to get about?

CLMT: My medicine makes me forget exact dates. It was right around 2005 when I started getting really bad and falling and that's when I started using it.

ALJ: What did the -- now, he says the doctor prescribed it in '07, was that just for insurance or something to pay for it or what? You're saying you are using it?

CLMT: Actually, I was using what -- I was using a cane for a little while and then when he prescribed me the walker then I got it as soon as he prescribed it.

ALJ: All right. Do you use it all the time?

CLMT: All the time.

ALJ: Even at home?

CLMT: No. At home I try to use my cane because I don't have a lot of room in between doorways and stuff.

ALJ: To maneuver?

CLMT: Yeah.

ALJ: Okay. But why was the '03 date the alleged onset date, is that when you really thought you couldn't work anymore?

CLMT: That's when I started to get -- that's when I started vomiting at work, losing my bowels at work. And that's -- I was doing a haircut I remember I was doing a haircut and I cut myself an bled on someone and it terrified me.

ALJ: Yes.

CLMT: That I would infect them.

ALJ: Because you already knew you were positive at that point?

CLMT: Yes.

ALJ: Yes.

CLMT: And I was afraid that I would infect them.

ALJ: Do you work in Texas? I was just curious --

CLMT: I'm sorry.

ALJ: -- because if we have this fine young lawyer here protects us. I thought maybe you'd be down in Texas working or something.

CLMT: No, sir. Worked online.

ALJ: Online? And then you've -- so, you've been in Oklahoma the whole time? Where did you work when you were working?

CLMT: I had my own [redacted]

ALJ: You had your own business? And where was it located?

CLMT: Me and my mom opened up a [redacted] in Moore.

ALJ: In Moore. Okay. So, that was a going business?

CLMT: I was very outgoing. I loved to work, now I can't. I want to so bad, but I can't.

ALJ: How do you spend your days?

CLMT: In bed or on the couch.

ALJ: All right. [redacted]o you have some questions.

ATTY: I do, Your Honor.

EXAMINATION OF CLAIMANT BY ATTORNEY:

Q Mr. [redacted] when did the frequent nausea and diarrhea start for you? Was that in 2003?

A It started then and started getting real bad so I quit working.

Q Okay. And when was that?

A When I started using my walker.

Q So, 2005?

A Yeah.

Q Okay. Did you ever have issues with not making it to the bathroom in time, or going in your pant? How frequently did that happen? Was it a weekly occurrence, a monthly occurrence?

A It happens probably a couple times a week.

Q Okay. Was it the same back then as well?

A Yes.

Q Okay. Were you having any difficulty or any problems with headaches back then?

A Yes, sir. I've had headaches ever since I was 11.

Q Okay. So, when did they become disabling?

A When I got my walker, that's when I started getting really bad and everything started hurting.

Q Okay. Has your fatigue just as bad back then as it is now or has it gotten worse?

A I can't walk from my bed to my couch without getting weak.

Q Okay.

A I mean and that's maybe seven feet and I mean and I get winded walking up the stairway just even to get inside the building I had to sit down because I was winded.

Q Okay. Do you have any difficulty bathing or showering?

A I have to have help.

Q Who helps you?

A [redacted].

Q When's the last time you've been able to get a bath or a shower unassisted?

A I can't take a bath, I usually take a shower. I have a chair that I put in my shower and it helps.

Q Okay. How long have you had to use that?

A Pretty much ever since I had the walker.

Q Okay.

A Because I can't -- I lose my balance and I fall.

Q Okay. Are you having any trouble sleeping?

A I have really bad insomnia. I'm on two different kinds of sleeping pills. I mean one of them works for my nerves, I think, I guess I'm not sure. I take Seroquel and some -- I have the bottle man, I can't --

Q Would you describe -- do you have, other than your leg pain, your neuropathic pain, do you have just a general sense of or feeling of almost flu like symptoms, just body aches?

A I have like I have the flue all the time. All the time my legs feel like I've been beaten with a baseball bat. My feet they feel like there's needles' just sticking in them and I mean if I don't have my walker that the pain gets so intense that I just fall.

Q Okay. Are you having any sweating problems?

A I have severe night sweats where I'm supposed to wear a pain patch and I have such severe sweats that the patch just comes right off.

Q Okay. And I'm not going to ask you too many more questions. Before you got your walker, what do you feel was your most severe symptom that was keeping you from working?

A The nausea, the vomiting, just feel overall sick.

Q Okay. And when you did vomit was that a daily occurrence --

A Yeah.

Q -- was it a monthly occurrence? Okay.

A It was daily. I mean I take like 15 pills -- 15 different kinds of pills a day. I mean it's just fighting off hoping that I get my anti-nausea medicine in my system before I get out of the restroom and it's in my system where I'll puke.

Q Okay. And when's the last time that you left your house unaccompanied by someone else?

A A few years.

Q When you do leave the house you go with somebody, correct?

Who do you go with?

A I don't drive.

Q Who do you go with and where do you go?

A [redacted] takes me to my doctor's appointment and my mom takes me to the grocery store.

Q Okay. How often are you able to get out and go to the grocery store with your mom?

A Once a month.

Q Okay. Is that kind of to just get out?

A Yes. She said maybe it would be good for me if I get out. I mean they have those carts that you can ride.

Q Sure. Okay. Thank you very much Mr. [redacted].

ATTY: No further questions, Your Honor.

ALJ: Doctor I've still got you on the phone and it's occurred to me that we may not need you anymore this morning. That we need to ask you anymore questions today.

ATTY: I just have one question for him, Your Honor.

ALJ: The doctor? Okay.

ATTY: [redacted] is it possible to have severe AIDS or HIV related symptoms and have an extremely a relatively CD4 count.

ME: I think you could have anxiety, yes. Because as I don't think CD4 has to do with your mental state. I think he's had real anxiety. Now, I have a question for him. Has he has been -- ever been on anti retroviral therapy?

CLMT: Retro -- what's that?

ME: I don't find it in his chart by the way.

ALJ: Did the doctor fail?

ATTY: Yes.

ME: The real H-A-A-R-P is real good -- be good medicine for him.

CLMT: Yes.

ALJ: You were on that?

CLMT: I do take it now.

ME: I can't -- I haven't found it in the records.

ALJ: Well, he says he takes it now. Who's prescribing that?

CLMT:

ALJ: Dr. he says is prescribing that for him and he's taking that.

ME: Well, I didn't find it in his notes and I looked specifically for it, but his notes are a lot of them are handwritten and he sometimes change route and works there.

CLMT: Atripla is what I take.

ALJ: What?

CLMT: Atripla.

ALJ: Well, he's in fact looking at his pill bottles, or pill bottle to see what the exact stuff is. So, I kind of missed that myself. What do you have there Mr. [redacted]

CLMT: A-T-R-I-P-L-A.

ALJ: A, A what?

CLMT: Oh, I'm sorry. A-T-R-I-P-L-A.

ALJ: A-T-R-I-P-L-A, Atripla.

ME: Yeah, that so much I know.

ALJ: Yeah.

ME: Taking -- that's to try to counteract certain virus accounts that he has see.

ALJ: Yes.

ME: But those new blood runnings tell me I couldn't find in his chart because he had been starting them then and that's pretty common when you have a -- higher count if, than you actually had if he's being on it and obviously you'll find it.

ALJ: Okay.

ME: But hearing that still goes with what I said. I think he has acute days and I think he's basically a problem because his CD8 count is higher than the CD4.

ALJ: All right. Anything else from the doctor before I let him go?

ATTY: No, Your Honor.

ALJ: I guess these are the three cases you had today doctor, right?

ME: That's correct.

ALJ: Well, okay then we won't talk to you for a while.

ME: I'll talk to you tomorrow.

ALJ: Thank you.

ME: Okay.

ALJ: Okay. The doctor's testimony has been favorable to the claimant.

REEXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE:

Q Can you handle your own money?

A He handles everything for me he takes care of me.

Q So, you may need help. That's something you need to go over with the PO then. I didn't know if your friend would help you handle, your mother, who, but somebody may need to help you if you're so sick you can't hardly manage those things.

A Yeah. He takes care of everything for me.

Q What about --

A If it wasn't for him --

Q -- is this apartment on the ground floor? Otherwise, you'd have a heck of a time.

A I wouldn't be able to get upstairs.

Q How'd you get in the building today?

A It was so hard.

Q Which ramp did you come up or sidewalk?

A We drove around a couple times, I couldn't find an entrance, so I -- there was a ramp and I just started walking up that and I had to stop twice walking up the ramp and I don't have a -- and a man came outside with an umbrella and just helped me walk in side.

Q We warned them before we moved to this building, this was not a handicapped friendly building. That cited one of at least the Rehabilitation Act that applies to Federal buildings. A long ramp has actually got six ramps and little platforms or flat spaces in the kingdom. So, that's their trick, you understand what I'm --

A Yeah. You've to be able to stop.

Q It's only 187 feet from the sidewalk level to the front door, but it's actually six ramps and each ramp is short enough to meet the Rehabilitation Act.

ATTY: And they've got that that huge one the size of a football field coming up the front.

ALJ: Yeah. And on the west -- on the east end they've got more steps and they had so many people falling on the steps and they took those out and put in another ramp and it's only got a couple of ramps, but again because it's got two ramps and step and a landing and the planning that they set out that gets by. Write your congressman. Write your senator.

CLMT: Yes, sir.

ALJ: I hope you never have to come up here again to think about the other people that are following you. I just help people, put that on the record, because it's disgusting. I was a union rep and we negotiated over details and I said, this is not going to be good and they said well its not affecting the employees. In other words, why do you care about it, you're representing the employees, the judges, doesn't affect what you do. I said well as a matter of fact it does affect me with my bad heart number one. Number two, are you telling me I shouldn't be concerned about our claimant's that are coming to these hearings on crutches, walkers, wheelchairs. Now, what kind of people do you think we are. Do you know who we deal with? Oh, I got upset about that.

ATTY: What was their response? Obviously, they didn't listen.

ALJ: No. No. I'm still not happy about it. Well, anything else I need to ask. Can you get out to any socializing events with people, like go to a church service --

CLMT: I get too sick. I get too scared that I'm going to lose

my bowels.

ALJ: -- family dinner or anything like that?

CLMT: My parents live in Moore and they come to my house every once in a great while, but I mean I don't get out.

ALJ: I just kind of realized is this address -- is that Purcell? That's in Purcell. Okay. I want to see if that's a neat area.

CLMT: It's beautiful over there.

ALJ: I have so much stuff I'd have to have a big house. I think because I have so much stuff, because you sometimes get wedded to your stuff. Okay. I think we've covered everything today. Anything else counselor?

ATTY: No, sir.

ALJ: All right then we'll close the hearing.

(The hearing closed at 11:54 p.m., on April 29, 2009.)

C E R T I F I C A T I O N

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded at the hearing held in the case of [redacted], before Administrative Law Judge Peter M. Keltch.

Lesley Tamarelli/CM
Lesley Tamarelli, Transcriber
Free State Reporting, Inc.

Caroline Musterman
Caroline Musterman, Proofreader
Free State Reporting, Inc.

August 11, 2008

Re: [redacted]
DOB: [redacted]
SS# [redacted]

To Whom It May Concern:

[redacted] has been a patient of mine since 2004. He has severed from severe depression. As well, he has the complication of HIV disease, which has lead to multiple other difficulties.

He is on a large number of medications, many of which have side effects. He has severe peripheral neuropathy from the AIDS disease or the medications. He suffers from many abdominal complaints and chronic diarrhea, as well as fatigue secondary to the medications as well.

It is my opinion he cannot maintain gainful employment nor would he be capable of sitting for additional training or education.

If I can be of any further service, please contact me here at [redacted]

Sincerely,

M.D.
mas

Permanent Subcommittee on Investigations
EXHIBIT #10c

[redacted]

Patient:
DOB:
Phone:

Ordering Physician: [redacted], MD
Date:

Regarding the above patient, he has been patient of mine for the last 6 months. He has a severe disabling form of psoriasis accompanied related to HIV. I understand that he has applied for disability and agree that he is an acceptable candidate and is not capable of working at this time.

Respectfully,

[redacted], MD

Permanent Subcommittee on Investigations
EXHIBIT #10d

[redacted]

Office/Outpatient Visit
Visit Date: Fri, Oct 24, 2008 09:25 am
Provider [redacted] Assistant: [redacted]
Location [redacted]

Electronically signed by provider on 10/25/2008 11:10:02 PM
Printed on 03/04/2009 at 12:11 pm.

SUBJECTIVE:

CC:
He is a new patient.

HPI:

Problem to be addressed: Peripheral neuropathy:
This is the first visit to this office for this problem. The symptoms started more than 5 years ago. The symptoms, however, started worsening 3 years ago. The affected body area is the trunk and extremeties diffusely. He characterizes the symptoms as moderate to severe in intensity, constant, aching, sharp, and numbness and tingling. He rates his pain overall at a 9 with 1 being mild and 10 being severe-the worst pain the patient has ever experienced. Aggravating factors include movement in general. Prior work-up has included the following: a CT scan, an MRI, and an X-ray. There have been no previous episodes. His current primary physician is Dr. ' . His previous physician was Dr. ' n. The patient is refered by Dr. '

ROS:
CONSTITUTIONAL: Positive for **fatigue, fever, night sweats and unintentional weight gain.** Negative for chills or unintentional weight loss.
EYES: Positive for **use of glasses or contacts.** Negative for blurred vision.
E/N/T: Positive for **nasal congestion and frequent rhinorrhea.** Negative for ear pain, diminished hearing, hoarseness, sore throat or tooth pain.
CARDIOVASCULAR: Positive for **dizziness.** Negative for chest pain, palpitations or tachycardia.
RESPIRATORY: Positive for **chronic cough, dyspnea and frequent wheezing.** Negative for hemoptysis.
GASTROINTESTINAL: Positive for **abdominal pain, acid reflux symptoms, anorexia, abdominal bloating, diarrhea and heartburn.** Negative for constipation, hemorrhoids or melena.
GENITOURINARY: Negative for unprotected intercourse and impotence.
MUSCULOSKELETAL: Positive for **arthralgias, back pain, joint stiffness and myalgias.**
INTEGUMENTARY: Positive for **rash.** Negative for acne, atypical mole(s), extremely dry skin, jaundice, pruritis or wart(s).
NEUROLOGICAL: Positive for **dizziness and headaches.** Negative for fainting.
HEMATOLOGIC/LYMPHATIC: Positive for **easy bruising.** Negative for excessive bleeding, history of blood transfusion or lymphadenopathy.
ENDOCRINE: Positive for **temperature intolerances and polydipsia.** Negative for hair loss or polyphagia.
ALLERGIC/IMMUNOLOGIC: Positive for **seasonal allergies and risk factors for HIV.** Negative for perennial allergies or frequent URI-type illnesses.
PSYCHIATRIC: Positive for **anxiety, depression, feelings of stress, difficulty concentrating and sleep disturbance.** Negative for suicidal thoughts.

Past Medical History / Family History / Social History:

Past Medical History:

Aids/ HIV
Hyperlipidemia
Peripheral Neuropathy
Shingles

CURRENT MEDICAL PROVIDERS:
Primary care provider
Interventional Pain Management: Dr.

Surgical History:

Hemorrhoid Sx

Family History:

Father: Congestive Heart Failure; CAD; Myocardial Infarction
Mother: Carotid Artery Stenosis; Congestive Heart Failure; Myocardial Infarction

Social History:

Occupation: Unemployed
Marital Status: Married (by common law)
Children: None

Tobacco/Alcohol/Supplements:
Tobacco: Cigarettes; Currently smokes 1/2 pack per day.

Allergies:
Compazine:
Imitrex:
Promethazine HCl:

Current Medications:
Atripla 600mg/200mg/300mg Tablet Take 1 tablet(s) by mouth daily
Lipitor 80mg Tablet Take 1 tablet(s) by mouth daily
Tricor 145mg Tablet Take 1 tablet(s) by mouth daily
Acyclovir 400mg Tablet Take 1 tablet(s) by mouth qid for 5 days
Albuterol 90mcg/1actuation Oral Inhaler 2 puffs prn
Norco 10mg/325mg Tablet 1 tablet(s) by mouth 5x a day
Promethazine HCl 50mg Tablet Take 1 tablet(s) by mouth q 4 to 6 hr
Trazodone HCl
Xanax 2mg Tablet

OBJECTIVE:

Vitals:

Current: 10/24/2008 9:25:26 AM
Wt: 231 lbs
BP: 120/76 mm Hg; P: 67 bpm; R: 16 bpm

Exams:

GENERAL: well developed; well nourished; well groomed; **no apparent distress**
EYES: lids and conjunctiva are normal; PERRL;
E/N/T: normal nose; normal external auditory canals and tympanic membranes; Oropharynx: normal mucosa, palate, and postarior pharynx;
NECK: Neck is supple with full range of motion; No lymphademopathy; thyroid is normal to palpation;
RESPIRATORY: normal respiratory rate and pattern with no distress; rhonchi heard throughout; diffuse expiratory wheezes
CARDIOVASCULAR: normal rate; regular rhythm; normal S1 and S2 heartsounds with no S3 or S4
GASTROINTESTINAL: normal bowel sounds; no masses or tenderness; no organomegaly;
MUSCULOSKELETAL: Legs show diminished sensation hips down, hyperalgesia present as well. Trace edema bilaterally. He uses a walker. He can barely get up on the exam table. Diminshed sensation from knees down
SKIN: no ulcerations, lesions or rashes; no peripheral extremity edema;

PSYCH: mental status: alert and oriented x 3; appropriate affect and demeanor; recent and remote memory are intact; good insight and judgement;

ASSESSMENT:

957.1 Neuropathic pain
729.5 Leg pain
272.2 Mixed hyperlipidemia
307.42 Chronic insomnia

ORDERS:

Meds Prescribed:
Refill of: Norco 10mg/325mg Tablet Take 1-2 tablet(s) by mouth q6h prn pain #180 (One Hundred and Eighty) tablet(s) Refills: 0
Chantix 1mg Tablet Starter pack 0.5mg bid x 10 days then 1mg bid #1 (One) packet(s) Refills: 0

PLAN:

Neuropathic pain

RECOMMENDATIONS:
Will continue current opiate management and increase Lortab to up to 6 daily until we see what lowering statins does to myopathy

Pain management recommendations:
Continue the following medications at the dosage on the medication list: Lyrica.

Leg pain

MEDICATIONS: See prescriptions ordered today on medication list
Refill of medication for this problem which is present in the medication list was given today.

FOLLOW UP: Schedule a follow-up appointment in 3 weeks.

Mixed hyperlipidemia

RECOMMENDATIONS:
I told him to go ahead and cut Lipitor and tricor. Discuss with [redacted] further about discontinuing or changing to Vytorin. Would like to see what baseline pain is off statins

Chronic insomnia

RECOMMENDATIONS:
Seroquel samples given for anxiety and sleep. Titrate as necessary
Trial of Chantix for smoking cessation.

Prescriptions:
Refill of: Norco 10mg/325mg Tablet Take 1-2 tablet(s) by mouth q6h prn pain #180 (One Hundred and Eighty) tablet(s) Refills: 0
Chantix 1mg Tablet Starter pack 0.5mg bid x 10 days then 1mg bid #1 (One) packet(s) Refills: 0

[redacted]

Office/Outpatient Visit
Visit Date: Thu, Nov 13, 2008 09:57 am
Provider: MD (Supervisor: , MD; Assistant:
Location: Family Medicine

Electronically signed by provider on 11/13/2008 08:42:53 PM
Printed on 03/04/2009 at 12:11 pm.

SUBJECTIVE:

CC:
He is an established patient. He is here to follow up on the following: foot pain and leg pain.

HPI:

His symptoms are about the same. He feels as though the symptoms are not controlled at this point. He characterizes the foot pain as moderate in intensity. He rates his pain overall at a 8 with 1 being mild and 10 being severe, the worst pain the patient has ever experienced. He needs the following medication refills: Norco. The following are medication changes from the last visit: Seroquel for sleep and changing tricor and starting to Vytorin. Patient states the Seroquel samples that were given to him worked great. He is sleeping better. Patient does state that he feels like he is coming down with flu like symptoms. He doesn't report much change since changing form Statins/Tricor to Vytorin. He does look quite a bit better. He reports much improved sleep since taking Seroquel at bedtime. He and his significant other get significant folliculits rashes which is present today.

Past Medical History / Family History / Social History:

Past Medical History:

Aids/ HIV
Hyperlipidemia
Peripheral Neuropathy
Shingles

CURRENT MEDICAL PROVIDERS:
Primary care provider: Dr.
Interventional Pain Management: Dr.

Surgical History:

Hemorrhoid Sx

Family History:

Father: Congestive Heart Failure; CAD; Myocardial Infarction
Mother: Carotid Artery Stenosis; Congestive Heart Failure; Myocardial Infarction

Social History:

Occupation: Unemployed
Marital Status: Married (by common law)
Children: None

Tobacco/Alcohol/Supplements:
Tobacco: Cigarettes; Currently smokes 1/2 pack per day.

Allergies:
Compazine:
Imitrex:

[redacted]

Office/Outpatient Visit
Visit Date: Thu, Nov 13, 2008 09:57 am
Provider: MD (Supervisor: MD; Assistant:
Location:[redacted]Family Medicine

Electronically signed by provider on 11/13/2008 08:42:53 PM
Printed on 03/04/2009 at 12:11 pm.

Current Medications:
Chantix 1mg Tablet Starter pack 0.5mg bid x 10 days then 1mg bid
Atripla 600mg/200mg/300mg Tablet Take 1 tablet(s) by mouth daily
Lyrica 150mg Capsules 1 cap three times daily by mouth for nerve pain
Norco 10mg/325mg Tablet Take 1-2 tablet(s) by mouth q6h prn pain
Acyclovir 400mg Tablet Take 1 tablet(s) by mouth qid for 5 days
Albuterol 90mcg/1actuation Oral Inhaler 2 puffs prn
Promethazine HCl 50mg Tablet Take 1 tablet(s) by mouth q 4 to 6 hr
Trazodone HCl
Xanax 2mg Tablet
Atropine Sulfate 0.4mg Tablet
Seroquel 100mg Tablet 1 tab at bedtime
Suboxone 2mg/0.5mg Tablets, Sublingual 1 tab daily under the tongue for pain too be started

OBJECTIVE:

Vitals:

Current: 11/13/2008 10:08:02 AM
Wt: 235 lbs
BP: 118/80 mm Hg; P: 100 bpm

Exams:

GENERAL: well developed; well nourished; well groomed; **no apparent distress**
EYES: lids and conjunctiva are normal; PERRL;
E/N/T: normal nose; normal external auditory canals and tympanic membranes; Oropharynx: normal mucosa, palate, and posterior pharynx;
NECK: Neck is supple with full range of motion; No lymphadenopathy; thyroid is normal to palpation;
RESPIRATORY: normal respiratory rate and pattern with no distress; normal breath sounds with no rales, rhonchi, wheezes or rubs;
CARDIOVASCULAR: normal rate; regular rhythm; normal S1 and S2 heartsounds with no S3 or S4
GASTROINTESTINAL: normal bowel sounds; no masses or tenderness; no organomegaly;
MUSCULOSKELETAL: Legs show diminished sensation hips down, hyperalgesia present as well. Trace edema bilaterally. He uses a walker. He can barely get up on the exam table. Diminshed sensation from knees down
SKIN: mild folliculitis changes on the upper arms; no peripheral extremity edema;
PSYCH: mental status: alert and oriented x 3; appropriate affect and demeanor; recent and remote memory are intact; good insight and judgement;

ASSESSMENT:

356.8	Peripheral neuropathy
307.42	Chronic insomnia
957.1	Neuropathic pain
704.8	Folliculitis

PLAN:

[redacted]

Office/Outpatient Visit
Visit Date: Thu, Nov 13, 2008 09:57 am
Provider: [redacted] MD (Supervisor: [redacted] MD; Assistant: [redacted]
Location: [redacted] Family Medicine

Electronically signed by provider on 11/13/2008 08:42:53 PM
Printed on 03/04/2009 at 12:11 pm.

Peripheral neuropathy

Pain management recommendations:
Suboxone/Subutex explained in depth including the following:
1. **Sublingual route of delivery.**
2. **Off label use for pain management.**
3. **It is less addictive in nature than traditional narcotics and weaning off is poseible.**

Follow up for Suboxone/Subutex induction at the patient's earliest convience.
Will add MS Contin and wean lortab after he is on Suboxone

Prescriptions:
Suboxone 2mg/0.5mg Tablets, Sublingual 1 tab daily under the tongue for pain #30 (Thirty) tablet(s) Refills: 0

Chronic insomnia

Pain management recommendations:
Continue the following medications at the dosage on the medication list: Seroquel.

Neuropathic pain

RECOMMENDATIONS:
Keep follow ups with Dr. [redacted]

Pain management recommendations:
Titrate Lyrica to maximum effective dose somewhere between 200-350mg daily divided TID. Monitor for side-effects including dizziness, blurred vision, fatigue, and leg swelling.

Folliculitis

RECOMMENDATIONS:
Use bactrim as prescribed for folliculits and use low dose bleach solution is bath water.

[redacted]

Office/Outpatient Visit
Visit Date: Mon, Dec 22, 2008 08:19 am
Provider: [redacted] MD (Supervisor: [redacted] MD; Assistant: [redacted]
Location: [redacted] Family Medicine

Electronically signed by provider on 12/22/2008 08:59:22 AM
Printed on 03/04/2009 at 12:11 pm.

MEDICATIONS:
Refill of medication for this problem which is present in the medication list was given today.

LABORATORY: Labs ordered include the following:
Urine Toxicology Screening-Test Code 2126

Pain management recommendations:
No changes in Suboxone/Subutex therapy at this time. Continue current medication dosing schedule.
A pain management contract was filled out by the patient today. He is in agreement of the contents.
UDS positive for THC and he admits ocassional use, especially since being out of pain medication. UDS must be clean next visit, he understands

FOLLOW UP: Schedule a follow-up visit in 1 month. Call prior with new or worrisome symptoms

Prescriptions:
Refill of: Suboxone 2mg/0.5mg Tablets, Sublingual 1 tab daily under the tongue for pain #30 (Thirty) tablet(s) Refills: 0
Refill of: Norco 10mg/325mg Tablet Take 1-2 tablet(s) by mouth q6h prn pain #180 (One Hundred and Eighty) tablet(s) Refills: 0

Orders:
80101 Urine Toxicology Screening; Test Code: 2126 (x10)

Chronic insomnia

MEDICATIONS:
Refill of medication for this problem which is present in the medication list was given today.

Prescriptions:
Refill of: Seroquel 200mg Tablet 1 tab at bedtime #30 (Thirty) tablet(s) Refills: 6

[redacted]

[redacted]
Office/Outpatient Visit
Visit Date: Mon, Jan 19, 2009 08:17 am
Provider: [redacted], MD (Supervisor: [redacted], MD; Assistant: [redacted]
Location: [redacted] Family Medicine

Electronically signed by provider on 01/19/2009 09:40:27 AM
Printed on 03/04/2009 at 12:11 pm.

SUBJECTIVE:

CC:
He is an established patient. He is here to follow up on the following: Peripheral neuropathy and chronic pain syndrome.

HPI:

Problem to be addressed: Chronic pain syndrome symptoms:
His symptoms are improving. The change in condition is due to the following: due to increase in dose of pain meds. His chronic pain syndrome is nearly controlled at this point. He rates his pain overall at a 3 with 1 being mild and 10 being severe, the worst pain the patient has ever experienced. He characterizes the chronic pain syndrome as moderate in intensity, constant, just painful and difficult to describe, shooting/stabbing, burning, and needles. The patient needs the following medications refilled today: pain medications Suboxone. Currently he is taking the following dose of Suboxone: 2mg/0.5mg 1/8 tab 4 times per day. The following are medication changes from the last visit: Vytorin has been added. He has been experiencing the following adverse medication side-effects: dizziness, fatigue, nausea and vomiting. Compliance with treatment has been good; he takes his medication as directed and follows up as directed. Depression screening is positive for Agitation, anhedonia (decreased interest in socializing and sex), tendency towards indecisiveness, depressed mood and noticing mood swings w/ Suboxone. Having GI difficulties & would like referral for endoscope - was scheduled in the past & never done.

Past Medical History / Family History / Social History:

Past Medical History:

Aids/ HIV
Hyperlipidemia
Peripheral Neuropathy
Shingles

CURRENT MEDICAL PROVIDERS:
Primary care provider: Dr. [redacted]
Interventional Pain Management: Dr. [redacted]

Surgical History:

Hemorrhoid Sx

Family History:

Father: Congestive Heart Failure; CAD; Myocardial Infarction
Mother: Carotid Artery Stenosis; Congestive Heart Failure; Myocardial Infarction

Social History:

Occupation: Unemployed
Marital Status: Married (by common law)
Children: None

[redacted]

Office/Outpatient Visit
Visit Date: Mon, Jan 19, 2009 08:17 am
Provider: [redacted], MD (Supervisor: [redacted], MD; Assistant: [redacted]
Location: [redacted] Family Medicine

Electronically signed by provider on 01/19/2009 09:40:27 AM
Printed on 03/04/2009 at 12:11 pm.

Tobacco/Alcohol/Supplements:
Tobacco: Cigarettes: Currently smokes 1/2 pack per day.

Allergies:
Compazine:
Imitrex:

Current Medications:
Suboxone 2mg/0.5mg Tablets, Sublingual 1 tab daily under the tongue for pain
Chantix 1mg Tablet Starter pack 0.5mg bid x 10 days then 1mg bid
Seroquel 200mg Tablet 1 tab at bedtime
Atripla 600mg/200mg/300mg Tablet Take 1 tablet(s) by mouth daily
Lyrica 150mg Capsules 1 cap three times daily by mouth for nerve pain
Norco 10mg/325mg Tablet Take 1-2 tablet(s) by mouth q6h prn pain
Bactrim DS Tablet
Atropine Sulfate 0.4mg Tablet
Acyclovir 400mg Tablet Take 1 tablet(s) by mouth qid for 5 days
Albuterol 90mcg/1actuation Oral Inhaler 2 puffs prn
Promethazine HCl 50mg Tablet Take 1 tablet(s) by mouth q 4 to 6 hr
Xanax 2mg Tablet

OBJECTIVE:

Vitals:

Current: 1/19/2009 8:21:30 AM
Wt: 230 lbs
BP: 136/98 mm Hg; P: 120 bpm

Exams:

GENERAL: well developed; well nourished; well groomed; no apparent distress
EYES: lids and conjunctiva are normal; PERRL;
E/N/T: normal nose; normal external auditory canals and tympanic membranes; Oropharynx: normal mucosa, palate, and posterior pherynx;
NECK: Neck is supple with full range of motion; No lymphademopathy; thyroid is normal to palpation;
RESPIRATORY: normal respiratory rate and pattern with no distress; normal breath sounds with no rales, rhonchi, wheezes or rubs;
CARDIOVASCULAR: normal rate; regular rhythm; normal S1 and S2 heartsounds with no S3 or S4
GASTROINTESTINAL: normal bowel sounds; no masses or tenderness; no organomegaly;
MUSCULOSKELETAL: Legs show diminished sensation hips down, hyperalgesia present as well. Trace edema bilaterally. He uses a walker. Diminshed sensation from knees down
SKIN: mild folliculitis changes on the upper arms; no peripheral extremity edema;
PSYCH: mental status: alert and oriented x 3; appropriate affect and demeanor; recent and remote memory are intact; good insight and judgement;

ASSESSMENT:

338.4 Chronic pain syndrome
307.42 Chronic insomnia

[redacted]

Office/Outpatient Visit
Visit Date: Mon, Jan 19, 2009 08:17 am
Provider: [redacted] MD (Supervisor: [redacted] MD; Assistant: [redacted]
Location: [redacted] Family Medicine

Electronically signed by provider on 01/19/2009 09:40:27 AM
Printed on 03/04/2009 at 12:11 pm.

957.1 Neuropathic pain
787.02 Nausea

PLAN:

Chronic pain syndrome

Pain management recommendations:
Will start the following diuretic for peripheral edema control: Aldactazide to be initated for peripheral edema. It was discussed that multiple medications used in pain management can cause peripheral edema especially when used in combination..
Duragesic patch will be started at this time and titrated accordingly. Monitor for side-effects as discussed.

FOLLOW UP: Schedule a follow-up visit in 1 month. Call prior with new or worrisome symptoms.

Prescriptions:
Duragesic 12mcg/hr Transdermal Patch Apply 1 patch(es) to upper torso as directed every 48 hours as needed for pain #3 (Three) 5 patch box Refills: 3

Chronic insomnia

Pain management recommendations:
As sleep hygiene is essential to good pain control, he is to continue current sleep medication.

Prescriptions:
Alprazolam 1mg Tablets, Extended Release 3 tablets by mouth daily for anxiety #90 (Ninety) tablet(s) Refills: 0
Aldactazide 50mg/50mg Tablet Take 1 tablet(s) by mouth daily for fluid retention. This is a diuretic. #30 (Thirty) tablet(s) Refills: 6

Neuropathic pain

Pain management recommendations:
The following medications are to be continued as listed on the current medication list in the chart or as directed: Lyrica.

Nausea

RECOMMENDATIONS:
Trial of Reglan for chronic severe neusea and GERD.

FOLLOW UP: Schedule a follow-up visit in 1 month. Call prior with new or worrisome symptoms.

Prescriptions:

[redacted]

Office/Outpatient Visit
Visit Date: Mon, Jan 19, 2009 08:17 am
Provider: [redacted] MD (Supervisor: [redacted], MD; Assistant: [redacted]
Location: [redacted] Family Medicine

Electronically signed by provider on 01/19/2009 09:40:27 AM
Printed on 03/04/2009 at 12:11 pm.

Reglan 10mg Tablet Take 1 tablet(s) by mouth 4 times daily for nausea. Before each meal and bedtime #120 (One Hundred and Twenty) tablet(s) Refills: 11
Zofran 4mg Tablet 1 tab every 4 hrs as needed for nausea #90 (Ninety) tablet(s) Refills: 3

[redacted]

Office/Outpatient Visit
Visit Date: Tue, Feb 17, 2009 08:18 am
Provider: MD (Supervisor: , MD; Assistant:
Location: Family Medicine

Electronically signed by provider on 02/17/2009 09:06:57 AM
Printed on 03/04/2009 at 12:11 pm.

SUBJECTIVE:

CC:
He is an established patient. He is here for follow up.

HPI:

Problem to be addressed: Peripheral neuropathy symptoms:
His symptoms are worse. He characterizes the peripheral neuropathy as moderate to severe in intensity. He rates his pain overall at a 9 with 1 being mild and 10 being severe, the worst pain the patient has ever experienced. He needs the following medication refills: Norco, Seroquel, Xanax. Patient would like to discuss changing his Fentanyl patch or increasing it. it does not seem to be doing anything for the patient. He states he had a a very bad month with his pain. He was also told to decrease his Xanax from 2mg tid to Xanax XR 1mg bid and is not doing well with this. Patient states he is more nauseated this month, his stomach medications are not helping and sometimes feels it makes it worse. Patient would like to discuss Marinol. He can get it for free with his through a state prgram.

Past Medical History / Family History / Social History:

Past Medical History:

Aids/ HIV
Hyperlipidemia
Peripheral Neuropathy
Shingles

CURRENT MEDICAL PROVIDERS:
Primary care provider: Dr.
Interventional Pain Management: Dr.

Surgical History:

Hemorrhold Sx

Family History:

Father: Congestive Heart Failure; CAD; Myocardial Infarction
Mother: Carotid Artery Stenosis; Congestive Heart Failure; Myocardial Infarction

Social History:

Occupation: Unemployed
Marital Status: Married (by common law)
Children: None

Tobacco/Alcohol/Supplements:
Tobacco: Cigarettes; Currently smokes 1/2 pack per day.

Allergies:
Compazine:

Office/Outpatient Visit
Visit Date: Tue, Feb 17, 2009 08:18 am
Provider: [redacted] MD (Supervisor: [redacted] MD; Assistant: [redacted]
Location: [redacted] Family Medicine

Electronically signed by provider on 02/17/2009 09:06:57 AM
Printed on 03/04/2009 at 12:11 pm.

Imitrex:

Current Medications:
Aldactazide 50mg/50mg Tablet Take 1 tablet(s) by mouth daily for fluid retention. This is a diuretic.
Alprazolam 1mg Tablets, Extended Release 3 tablets by mouth daily for anxiety
Duragesic 12mcg/hr Transdermal Patch Apply 1 patch(es) to upper torso as directed every 48 hours as needed for pain
Reglan 10mg Tablet Take 1 tablet(s) by mouth 4 times daily for nausea. Before each meal and bedtime
Suboxone 2mg/0.5mg Tablets, Sublingual 1 tab daily under the tongue for pain
Zofran 4mg Tablet 1 tab every 4 hrs as needed for nausea
Chantix 1mg Tablet Starter pack 0.5mg bid x 10 days then 1mg bid
Seroquel 200mg Tablet 1 tab at bedtime
Atripla 600mg/200mg/300mg Tablet Take 1 tablet(s) by mouth daily
Lyrica 150mg Capsules 1 cap three times daily by mouth for nerve pain
Norco 10mg/325mg Tablet Take 1-2 tablet(s) by mouth q6h prn pain
Bactrim DS Tablet
Atropine Sulfate 0.4mg Tablet
Acyclovir 400mg Tablet Take 1 tablet(s) by mouth qid for 5 days
Albuterol 90mcg/1actuation Oral Inhaler 2 puffs prn
Promethazine HCl 50mg Tablet Take 1 tablet(s) by mouth q 4 to 6 hr
Xanax 2mg Tablet

OBJECTIVE:

Vitals:

Current: 2/17/2009 8:29:54 AM
Wt: 230 lbs
BP: 118/89 mm Hg; R: 18 bpm

Exams:

GENERAL: well developed; well nourished; well groomed; no apparent distress
EYES: lids and conjunctiva are normal; PERRL;
NECK: Neck is supple with full range of motion; No lymphadenopathy; thyroid is normal to palpation;
RESPIRATORY: normal respiratory rate and pattern with no distress; normal breath sounds with no rales, rhonchi, wheezes or rubs;
CARDIOVASCULAR: normal rate; regular rhythm; normal S1 and S2 heartsounds with no S3 or S4
GASTROINTESTINAL: normal bowel sounds; no masses or tenderness; no organomegaly;
MUSCULOSKELETAL: Legs show diminished sensation hips down, hyperalgesia present as well. Trace edema bilaterally. He uses a walker. Diminished sensation from knees down
SKIN: mild folliculitis changes on the upper arms; no peripheral extremity edema;
PSYCH: mental status: alert and oriented x 3; appropriate affect and demeanor; recent and remote memory are intact; good insight and judgement;

ASSESSMENT:

356.9	Peripheral neuropathy
787.02	Nausea
338.4	Chronic pain syndrome

[redacted]

[redacted]

Office/Outpatient Visit
Visit Date: Tue, Feb 17, 2009 08:18 am
Provider: [redacted] MD (Supervisor: [redacted] MD; Assistant: [redacted]
Location: [redacted] Family Medicine

Electronically signed by provider on 02/17/2009 09:06:57 AM
Printed on 03/04/2009 at 12:11 pm.

729.5 Foot pain

PLAN:

Peripheral neuropathy

MEDICATIONS:
We will consider Marinol for nausea if patient has 2 months of clean urine drug screens.

Pain management recommendations:
The following medications are to be continued as listed on the current medication list in the chart or as directed: Fentanyl, Norco, Seroquel, and Xanax.
No changes in Suboxone/Subutex therapy at this time. Continue current medication dosing schedule.

FOLLOW UP: Schedule a follow-up visit in 1 month. Call prior with new or worrisome symptoms.

Prescriptions:
Refill of: Alprazolam 2mg Tablets, Extended Release 1 tab by mouth twice daily for anxiety #60 (Sixty) tablet(s) Refills: 0

Nausea

RECOMMENDATIONS:
Call if the increase in Zofran does not help with his nausea.

Prescriptions:
Refill of: Zofran 8mg Tablet Take 1 tablet(s) by mouth tid #90 (Ninety) tablet(s) Refills: 3

Chronic pain syndrome

RECOMMENDATIONS:
Pt asked about testosterone injections for fatigue and his sex drive. He is having his blood work faxed to us and we will consider injections pending the review of his lab work.

Prescriptions:
Refill of: Duragesic 25mcg/hr Transdermal Patch 1 patch every 48 hours for pain #3 (Three) 5 patch box Refills: 0
Refill of: Suboxone 2mg/0.5mg Tablets, Sublingual 1 tab daily under the tongue for pain #30 (Thirty) tablet(s) Refills: 0
Refill of: Norco 10mg/325mg Tablet Take 1-2 tablet(s) by mouth q6h prn pain #180 (One Hundred and Eighty) tablet(s) Refills: 0

[redacted]

[redacted]

[redacted] Family Clinic

PATIENT [redacted] DOB [redacted] ALLERGIES _____

MEDICAL HISTORY & PROGRESS NOTES DIAGNOSTIC PRO

9-12-07 Copied Letter 3-1-07 addu current Dat for ass

11-8-07 Dictation from Aug 16, 2007

[redacted] - August 16, 2007

S: The 32-year old patient comes in reporting his peripheral neuropathy is severe. He is almost teary eyed. He cannot even finish one person's haircut. He feels frustrated and sad. His right shoulder hurts so bad he cannot lift it over his head or past midline. His left shoulder has full range of motion. He reports that he has nausea almost continuously. He is not sure if the PHENERGAN is working. He has tried OXYCONTIN AND AVINZA in the past. The ROBAXIN caused nausea and vomiting. He is just very upset today. Denies fever, chills, nausea, vomiting, or diarrhea. Past medical history extensively reviewed and placed in chart.

O: General: Alert and oriented and in no apparent distress. HEENT entirely within normal limits. Funduscopic exam benign. Neck supple without adenopathy, megaly or bruit. Chest/Heart: Regular rate and rhythm without murmur, rub or gallop. Lungs are clear to auscultation. Extremities: No rashes, clubbing, cyanosis or edema. Abdomen is diffusely tender with no guarding or rebound. Normoactive bowel sounds. Neuro intact. Decreased range of motion, passive and active pain to his right shoulder. Decreased strength to hand grip.

A:
1. Peripheral neuropathy.
2. AIDS.
3. Neuropathy.
4. Nausea and vomiting.
5. Reportedly degenerative bone disease.

P:
1. PHENERGAN 50 mg one tablet p.o. q. six hours. LYRICA 75 mg b.i.d., XANAX 2 mg q. eight hours, LORTAB 10 mg q. four to six hours. I have talked to him about longer acting products and trying these at some point in the future.
2. I will go ahead and write for him a walker. We will see if the walker does not help him with his mobility and decrease some of his pain.
3. Follow up over the next three to four weeks.

[redacted] M.D. /cls

Permanent Subcommittee on Investigations
EXHIBIT #10e

[redacted]

Office/Outpatient Visit
Visit Date: Mon, Jan 19, 2009 08:17 am
Provider: [redacted] MD (Supervisor: [redacted], MD; Assistant: [redacted])
Location: [redacted] Family Medicine

Electronically signed by provider on 01/19/2009 09:40:27 AM
Printed on 03/04/2009 at 12:11 pm.

SUBJECTIVE:

CC:
He is an established patient. He is here to follow up on the following: Peripheral neuropathy and chronic pain syndrome.

HPI:

Problem to be addressed: Chronic pain syndrome symptoms:
His symptoms are improving. The change in condition is due to the following: due to increase in dose of pain meds. His chronic pain syndrome is nearly controlled at this point. He rates his pain overall at a 3 with 1 being mild and 10 being severe, the worst pain the patient has ever experienced. He characterizes the chronic pain syndrome as moderate in intensity, constant, just painful and difficult to describe, shooting/stabbing, burning, and needles. The patient needs the following medications refilled today: pain medications Suboxone. Currently he is taking the following dose of Suboxone: 2mg/0.5mg 1/8 tab 4 times per day. The following are medication changes from the last visit: Vytorin has been added. He has been experiencing the following adverse medication side-effects: dizziness, fatigue, nausea and vomiting. Compliance with treatment has been good; he takes his medication as directed and follows up as directed. Depression screening is positive for Agitation, anhedonia (decreased interest in socializing and sex), tendency towards indecisiveness, depressed mood and noticing mood swings w/ Suboxone. Having GI difficulties & would like referral for endoscope - was scheduled in the past & never done.

Past Medical History / Family History / Social History:

Past Medical History:

Aids/ HIV
Hyperlipidemia
Peripheral Neuropathy
Shingles

CURRENT MEDICAL PROVIDERS:
Primary care provider: Dr. [redacted]
Interventional Pain Management: Dr. [redacted]

Surgical History:

Hemorrhoid Sx

Family History:

Father: Congestive Heart Failure; CAD; Myocardial Infarction
Mother: Carotid Artery Stenosis; Congestive Heart Failure; Myocardial Infarction

Social History:

Occupation: Unemployed
Marital Status: Married (by common law)
Children: None

[redacted]

Permanent Subcommittee on Investigations
EXHIBIT #10f

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability, Disability Insurance Benefits, and Supplemental Security Income
(Wage Earner)	[redacted] (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before the undersigned on a request for hearing dated February 21, 2008 (20 CFR 404.929 *et seq.* and 416.1429 *et seq.*). The claimant appeared and testified at a hearing held on April 29, 2009, in Oklahoma City, Oklahoma. Also appearing via telephone and testifying were Herbert P. Reinhardt, M.D., an impartial medical expert. The claimant is represented by [redacted] attorney.

The claimant is alleging disability since April 15, 2003.

ISSUES

The issue is whether the claimant is disabled under sections 216(i), 223(d) and 1614(a)(3)(A) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

With respect to the claim for a period of disability and disability insurance benefits, there is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant s earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through March 31, 2005. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful review of the entire record, the undersigned finds that the claimant has been disabled from April 15, 2003 through the date of this decision. The undersigned also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

See Next Page

Permanent Subcommittee on Investigations
EXHIBIT #10g

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is severe or a combination of impairments that is severe (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant s impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant s impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant s residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual s residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the claimant s impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f) and 416.920(f)). If the claimant has the residual functional capacity to do his past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the undersigned must determine whether the claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the claimant is able to do

See Next Page

other work, he is not disabled. If the claimant is not able to do other work and meets the duration requirement, he is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g), 404.1560(c), 416.912(g) and 416.960(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. The claimant s date last insured is March 31, 2005.

2. The claimant has not engaged in substantial gainful activity since April 15, 2003, the alleged onset date (20 CFR 404.1520(b), 404.1571 *et seq.*, 416.920(b) and 416.971 *et seq.*).

3. The claimant has the following severe impairment(s): HIV infection and anxiety related disorder (20 CFR 404.1520(c) and 416.920(c)).

4. The severity of the claimant s impairment medically equals the criteria of section 14.08 *Human immunodeficiency virus HIV) infection* of 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and 416.929 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and 416.927 and SSRs 96-2p, 96-6p and 06-3p.

The evidence reveals the claimant has AIDS with painful peripheral neuropathy requiring pain medications (Exhibit 16F). Laboratory testing documents HIV infection (Exhibit 8F). Treatment records also reveal the claimant experiences fatigue and gastrointestinal difficulties related to illness and medication side effects (Exhibit 16F). In April 2009, [redacted] M.D., indicated the claimant has neuropathy related to HIV infection (Exhibit 15F; See also Exhibit 14F). [redacted] M.D., treats the claimant. Dr. [redacted]s records document AIDS, neuropathy, nausea, and vomiting (Exhibit 9F). Dr. [redacted]s records also document symptoms of anxiety for which medication has been prescribed and the need to be in an environment of low stress or demands (Exhibit 1F; See also Exhibit 8F). Likewise, Dr. [redacted]s records document symptoms of depression for which medication has been prescribed (Exhibit 8F). Dr. [redacted]s records also document prescription medication to treat headache pain.

Consultative evaluation by [redacted], Psy.D., in June 2007 yielded Axis I diagnosis of panic disorder with agoraphobia (Exhibit 3F). Consultative examination by [redacted], D.O., in December 2007 provided the following assessment: history of HIV; nausea, vomiting, and

See Next Page

diarrhea; neuropathy; dizziness; and tobacco abuse (Exhibit 10F). The claimant s impairment medically equals listing 14.08. [redacted] testified the claimant has AIDS with a lot of diarrhea and abnormal CD4 and CD8 levels. [redacted] testified AIDS becomes disabling because of the complications such as secondary infections and diarrhea. [redacted] noted the claimant has repeated episodes of diarrhea, peripheral neuropathy, and fatigu[redacted] stated the claimant has fatigue which is documented by Dr. [redacted] s records on almost every visit. He also noted the claimant has episodes of diarrhea which are documented. He also stated the claimant received a prescription for a walker in 2007.

The claimant alleges disability due to AIDS with extreme diarrhea, vomiting, and joint pain. The claimant reported he has extreme fatigue as well as nervousness (Exhibit 2E). The claimant testified he used a cane before the walker was prescribed. The claimant stated he loved working at the hair salon he opened with his mother but he is unable to do so. The claimant testified the frequent nausea and diarrhea began in 2003. The claimant testified he had fecal incontinence several times a week. The claimant testified he also has bad headaches and fatigue. The claimant stated he cannot walk from his bed to the couch without becoming winded. The claimant stated he had trouble walking into the building because he became winded. The claimant stated he cannot shower without assistance and has used a chair for quite some time because of balance trouble. The claimant stated he has insomnia for which he takes medication. The claimant testified he feels like he has the flu all of the time. He described intense pain in his legs with the sensation of needles sticking into his body. The claimant stated he has night sweats of such severity that his pain patch comes off. The claimant stated the nausea, vomiting, and feelings of sickness preclude him from working. The claimant stated he cannot drive. His mother takes him to the grocery store. He is also accompanied to doctor s appointments. The claimant stated he takes an anti-retroviral cocktail. The claimant stated he rarely leaves his home because he fears losing control of his bowels. The claimant stated he has not left the house unaccompanied in a number of years. He spends his days in bed or on the couch. The claimant s medications include those prescribed for treatment of AIDS, peripheral neuropathy, sleep, pain, nausea, and vomiting. Furthermore, he takes medications for asthma and infections (Exhibit 13E). The claimant s treatment records substantiate his allegations. The symptoms the claimant alleges verbally and in writing are consistently documented in his treatment records.

After considering the evidence of record, the undersigned finds that the claimant s medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the claimant s statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible. While the medical evidence of record is somewhat scant in correlation to the alleged onset date, the undersigned notes the claimant began falling and having fecal incontinence before quitting his business in the salon. The claimant testified he residues with a friend who pays for his medication with the agreement that he will reimburse the friend if benefits are awarded. The claimant stated he has memory problems due to his medications.

While the State agency medical consultants physical assessments acknowledge HIV, peripheral neuropathy, fatigue, pain, and gastrointestinal distress, the opinions are given little weight because another medical opinion is more consistent with the record as a whole (Exhibit 4F; See also Exhibits 7F and 12F). Furthermore, the State agency consultants did not adequately consider the combined effect of the claimant s impairments. While severe impairments were

See Next Page

acknowledged, the State agency medical consultants failed to see the medical equivalence addressed by [redacted]

However, the State agency psychological consultants mental assessments, that the claimant has severe mental impairment, are given great weight because they are consistent with the record as a whole (Exhibit 6F and 7F; See also Exhibit 11F).

5. The claimant has been under a disability as defined in the Social Security Act since April 15, 2003, the alleged onset date of disability (20 CFR 404.1520(d) and 416.920(d)). The medical evidence of record and the claimant s testimony suggest he may be physically incapable of managing or directing the management of his benefits. Appointment of a representative payee may be in the claimant s interest as determined by the Social Security Administration.

DECISION

Based on the application for a period of disability and disability insurance benefits protectively filed on September 14, 2006, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act since April 15, 2003.

Based on the application for supplemental security income filed on March 28, 2007, the claimant has been disabled under section 1614(a)(3)(A) of the Social Security Act since April 15, 2003.

The component of the Social Security Administration responsible for authorizing supplemental security income will advise the claimant regarding the nondisability requirements for these payments, and if eligible, the amount and the months for which payment will be made.

/s/ Douglas S. Stults
for Peter M. Keltch

Peter M. Keltch
U.S. Administrative Law Judge

July 15, 2009
Date

PMK:cjm

SOCIAL SECURITY ADMINISTRATION

Refer To: [redacted]

Office of Disability Adjudication and Review
SSA ODAR Hearing Ofc
301 Nw 6th St
3rd Floor West
Oklahoma City, OK 73102

Date: October 28, 2009

[redacted]

NOTICE OF DECISION FULLY FAVORABLE

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

This Decision is fully favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

The Appeals Council May Review the Decision on Its Own

The Appeals Council may decide to review my decision even though you do not ask it to do so. To do that, the Council must mail you a notice about its review within 60 days from the date shown above. Review at the Council's own motion could make the decision less favorable or unfavorable to you.

If You Disagree With the Decision

If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeals Council.

How to File an Appeal

To file an appeal you or your representative must request that the Appeals Council review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the **Appeals Council, Office of Disability Adjudication and Review, 5107 Leesburg Pike, and Falls Church, VA 22041-3255**. Please put the Social Security number shown above on any appeal you file.

Permanent Subcommittee on Investigations
EXHIBIT #11

Form HA-L76 (03-2007)

Time to File an Appeal

To file an appeal, you must file your request for review **within 60 days** from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time to Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider with your request for review.

How an Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The Council may review your case for any reason. It will review your case if one of the reasons for review listed in our regulation exists. Section 404.970 and Section 416.1470 of the regulation list these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

If No Appeal and No Appeals Council Review

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

You re Right to Representation in an Appeal

You may have a lawyer or other person help you in any appeal you file with the Appeals Council. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with an appeal.

If you get someone to help you with an appeal, you or that person should let the Appeals Council know. If you hire someone, we must approve the fee before he can collect it. And if

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you hire a lawyer or a non-attorney who is eligible for direct payment, we will withhold up to 25 percent of any past-due benefits to pay towards the fee.

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is [redacted] Its address is Social Security, 506 W Utah Ave, Chickasha, OK 73018-5852.

W. Howard O'Bryan, Jr. (0453)
Administrative Law Judge

Enclosures:
Form HA-L15 (Fee Agreement Approval)
Decision Rationale

cc: [redacted]

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF	CLAIM FOR
[redacted] (Claimant)	Period of Disability, Disability Insurance Benefits, and Supplemental Security Income
(Wage Earner)	[redacted] (Social Security Number)

I approve the fee agreement between the claimant and his representative subject to the condition that the claim results in past-due benefits. My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise accepted. I neither approve nor disapprove any other aspect of the agreement.

YOU MAY REQUEST A REVIEW OF THIS ORDER AS INDICATED BELOW

Fee Agreement Approval: You may ask us to review the approval of the fee agreement. If so, write us within 15 days from the day you get this order. Tell us that you disagree with the approval of the agreement and give your reasons. Your representative also has 15 days to write us if he or she does not agree with the approval of the fee agreement. Send your request to this address:

Joan E Parks Saunders, RCALJ, Jurist Doctorate, Esquire
Regional Chief Administrative Law Judge
SSA ODAR Regional Ofc
Rm 460
1301 Young St
Dallas, TX 75202

Fee Agreement Amount: You may also ask for a review of the amount of the fee due to the representative under this approved fee agreement. If so, please write directly to me as the deciding Administrative Law Judge within 15 days of the day you are notified of the amount of the fee due to the representative. Your representative also has 15 days to write me if he/she does not agree with the fee amount under the approved agreement.

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[redacted]

You should include the social security number(s) shown on this order on any papers that you send us.

/s/ W. Howard O'Bryan Jr.

W. Howard O'Bryan, Jr. (0453)
Administrative Law Judge

October 28, 2009
Date

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability, Disability Insurance Benefits[i], and Supplemental Security Income
(Wage Earner)	[redacted] (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before the undersigned[ii] on a request for hearing dated August 17, 2009 (20 CFR 404.929 *et seq.* and 416.1429 *et seq.*). The evidence of record supports ***a fully favorable decision; therefore no hearing[iii] has been held (20 CFR 404.948(a) and 416.1448(a)). The claimant is represented by Verle A Coon, a non-attorney representative.***

The claimant is alleging disability since January 1, 2007.

ISSUES

The issue is whether the claimant is disabled under sections 216(i), 223(d) and 1614(a)(3)(A) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

With respect to the claim for a period of disability and disability insurance benefits, there is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant s earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2011. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful review of the entire record, the undersigned finds that the claimant has been disabled from January 1, 2007 through the date of this decision. The undersigned also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, or work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is severe or a combination of impairments that is severe (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant s impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and

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416.926). If the claimant s impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant s residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual s residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the claimant s impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f) and 416.920(f)). If the claimant has the residual functional capacity to do his past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the undersigned must determine whether the claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he is not disabled. If the claimant is not able to do other work and meets the duration requirement, he is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g), 404.1560(c), 416.912(g) and 416.960(c)).

ALLEGATION(S)

Impairments, Limitations and Pain - Initial Level

Alleged Impairments:	*Bad right hip, Bad right leg, Left shoulder injury, Diabetes, Neuropathy hands & feet, Poor memory, Blurred vision in right eye, Dizziness 2-3 times a day Pain & weakness in hip, leg, shoulder. Neuropathy in hands and feet. Poor memory, blurred vision right eye. Dizziness. Hip leg shoulder pain diabetic neuropathy poor memory*
Limitations:	*Unable to use my left arm & hand because of pain & stiffness in shoulder. Numbness in my hands which make it difficult to grasp objects & have fine manipulation. Neuropathy & pain in my feet makes it difficult to stand and walk for any length of time. Poor memory makes it difficult to concentrate on a task & complete it in an acceptable period of time & to follow instructions. Blurry vision makes it difficult to see. Dizziness makes it difficult to do anything for 10-20 min. 2-3 times a day. Pain in my shoulder, arm and hands make it difficult to lift and carry objects, use tools, and grasp objects. The pain in my hip and leg make it difficult to stand, walk and sit for any length of time. It is very difficult to squat, bend, crouch and climb.*
Pain/Other Symptoms:	*Yes*
Impairments First Interfered With Ability to Work:	*01/01/2007*
Height:	*5' 9"*
Weight:	*170 lbs.*
Seen For Illnesses, Injuries, Conditions That Limit Ability to Work:	*Yes*
Seen For Emotional or Mental Conditions That Limit Ability to Work:	*Yes*
Client Remarks - 3368:	*The claimant does not have medical insurance or funds to pay for medical treatment and medications. *This report was completed on the Internet using i3368PRO by: Organization Name: [redacted] Organization Type: Non-Attorney Representative, Contact Name: [redacted] Organization Address: [redacted] Contact Phone Number [redacted] *Internet medical form initiated on: 03/04/2009**

Effect on Work - Initial Level

Ever Worked:	*Yes*
Working Now:	*No*
When Stopped:	*12/31/2006*
Stopped Working Because:	*Because of my condition*

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Work After Impairment First Interfered:	*No*

Impairments, Limitations and Effects - Reconsideration Level

Any Changes in Condition:	*Yes*
Changes in Condition:	*He has more anxiety, tightness in chest, and more headaches*
Date Occurred:	*3/2009*
Any New Illnesses or Injuries:	*No*
Any New Physical or Mental Limitations:	*No*
How Condition Affects Ability to Care for Personal Needs:	*no change*
How Daily Activities Changed:	*no change*
Client Remarks - 3441:	*[redacted] has no financial means, he is not able to work and has no insurance or disposable property to sell for medical care. Please correct [redacted] ceived no correspondence from DDD after submitting the correct address and phone number to them numerous times. It is evidently wrong everywhere in the system. All correspondence has been going to [redacted] at the claimant's address. Thank You.* This report was completed on the [redacted] ing i3441 (Public) by: Report Completer Name: [redacted] Report Completer Address: [redacted] ort Completer Phone Number: [redacted] eport Completer Email Address: null Internet medical form submitted on: 05/28/2009*
Work Since Original Claim Filed:	*No*
Submitting New Evidence:	*No*
Reason Appeal Requested:	*HE IS TOO DISABLED TO SUSTAIN SUBSTANTIAL GAINFUL ACT IVITY FOR AN EXTENDED PERIOD OF TIME BECAUSE OF HIS MEDICAL CONDITIONS*

Impairments, Limitations and Effects - Hearing Level

Any Changes in Condition:	*Yes*
Changes in Condition:	*Dizziness causes balance loss daily, dizziness lasts for 30-60 minutes. Seizures occur 2 x a month.*
Date Occurred:	*5/29/09*
Any New Illnesses or Injuries:	*No*
Any New Physical or Mental Limitations:	*Yes*
New Physical or Mental Limitations:	*Loss of concentration and anxiety attacks cause loss of memory and consciousness.*
Date Occurred:	*5/29/09*
How Condition Affects Ability to Care for Personal Needs:	*He needs help putting on his shirt because he can not lift his arms over his head.*
How Daily Activities Changed:	*no change*
Client Remarks - 3441:	*[redacted] homeless and has no one to care for him.* This report was completed on the Internet using i3441 (Public) by: Report Completer Name: [redacted] Report Completer Address: [redacted] eport Completer Phone Number: [redacted] Report Completer Email Address: null Internet medical form submitted on: 08/17/2009*
Worked Since Filing For Reconsideration:	*No*
Submitting New Evidence:	*In the future*
Reason Appeal Requested:	*I AM TOO DISABLED TO SUSTAIN SUBSTANTIAL GAINFUL AC TIVITY FOR AN EXTENDED PERIOD OF TIME BECAUSE OF MY PHYSICAL AND MENTAL LIMITATIONS.*

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. The claimant s date last insured is December 31, 2011.

2. The claimant has not engaged in substantial gainful activity[iv] since January 1, 2007, the alleged onset date (20 CFR 404.1520(b), 404.1571 *et seq.*, 416.920(b) and 416.971 *et seq.*).

3. The claimant has the following severe impairment(s): Primary: DIABETES MELLITUS[v] (2500), etc., / Secondary: AFFECTIVE MOOD DISORDERS[vi] (2960), Mental Retardation[vii] (3180), etc., etc., etc.,(20 CFR 404.1520(c) and 416.920(c)).

4. The above impairment(s) causes more than minimal functional limitations [see below [viii], [ix], [x], [xi].]

5. The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).

The medical evidence of record from a mental prospective shows a 43 yo male alleging physical problems, poor memory. Mental status exam noted claimant oriented in basic spheres, of well below average verbal ability. Psychotic symptoms are not in evidence. Memory functions are on the weak side, probably consistent with general level of verbal ability. In delayed recall he holds 2 of 5 cities after a 6-minute interval. Immediate memory for digits is on the weak side. In simple tasks he retains adequate concentration as in counting backward from 20, which he performs accurately, but not at a fast pace. He has difficulty grasping instructions for serial 3s addition and cannot go past the fourth number which was a struggle taking 26 second. He is unable to perform serial 7s subtraction. Asked toward the end of the exam to rate the degree of shoulder pain between 1 and 5 he replies that at the moment it is a 4 but up to that point he did not express any compliant. FO interviewer noted no problems with understanding, coherency, concentrating, talking or answering. Claimant shops for personal items, groceries, never used a check or saving account, can count change, fishes, spends time with friends in trailer park where he lives.

The claimant has the following degree of limitation in the broad areas of functioning set out in the disability regulations for evaluating mental disorders and in the mental disorders listings in 20 CFR, Part 404, Subpart P, Appendix 1: moderate restriction in activities of daily living, moderate difficulties in maintaining social functioning, moderate difficulties in maintaining concentration, persistence or pace, and one to two episodes of decompensation, each of extended duration.

6. The claimant has the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(a) and 416.967(a) except the credible evidence of record show the claimant is not functional at the sedentary level on a "regular and continuing" basis[xii].

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Physically speaking[xiii], the medical evidence of record shows 43 yo male alleging bad r. hip, leg and pain, 1. Shoulder injury, neuropathy in hands and feet, diabetes, dizziness, blurred vision, poor memory. VITALS: 69.4 , 181.2#, BP: 170/11O, P: 87, R: 16, VA:B:20/25. CHEST: Respiratory excursions are unlabored and quite, lungs clear to auscultation. CARDIO: heart rrr, w/o murmurs, rubs, gallops or clicks noted. ABD: soft, nontender w/normoactive sounds, no rebound tenderness, guarding or mass noted, no hepatomegaly, Ascites or abd Varices. EXTREMITIES: ROM of shoulder limited, tenderness on palpation of subacromial bursa of bil shoulders, no evidence of crepitus or effusion, ROM of elbows, wrists, hands WNL, no evidence of muscular atrophy or hypertrophy, ( ) Tinel s and Phalen s sign, grip 4/5 symmetrical bil., ROM of hips, knees, ankles WNL, knees do no demonstrate any evidence of crepitus or effusion, no evidence of dependent edema or varicosities. NEURO: CNS II XII intact, DTR s 2+/symmetrical, no focal sensory deficits, Romberg s and Babinski ( ). MUSCULOSKELETAL:NML hand skills, fine tactile manipulation of objects nml, posture nml, ROM of axial spine in standing position appears WNL and w/o subjective discomfort, SLR ( ) in seated/supine positions bil., heel/toe walking nml bil. GAIT: ambulates in a safe and stable gait at an appropriate speed w/o use of assistive devices.

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and 416.929 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and 416.927 and SSRs 96-2p, 96-6p and 06-3p.

WAIS-IV given by Psychometrist

9/15/2009 Full Scale IQ 72, Working Memory 71; Processing Speed 74; His overall thinking and reasoning abilities exceed those of only approximately 3% of individuals his age; may experience difficulty in keeping up with his peers in a wide variety of situations that require thinking and reasoning abilities; working memory better that approximately 3 % of his peers; Processing Speed he performed better than approximately 4% of his peers;

DDD CE Exam, Dr.

3/27/09 Pain in both my shoulders and I can t raise my arms above my head; burning and tingling in both my feet and legs and I get dizzy from time to time; Diabetes Mellitus diagnosed in 2000, prescribed pills however he has not taken anything for this issue

/2 Work history is cross country truck driving, construction, and auto mechanic; BP 170/110; range of motion of shoulders is limited; tenderness to palpation of the subacromial bursa of both shoulders; Grip strength 4/5

/3 Diabetes mellitus, untreated, essential hypertension, untreated; diabetic neuropathy by history; probable bilateral subacromial bursitis, acute and chronic

/5 Shoulder abduction left in supination 90/150; right in supination 90/150; left forward elevation 90/150; right forward elevation 90/150

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DDD Mental Evaluation by Dr. N

5/12/2009 Completed high school in special education; difficulty learning to read and required much individual attention for the teacher; stopped work about 4-5 years ago because of pain in his shoulder; has a haunted look, talks in small voice and intonation is mainly flat; expresses himself in simple but direct terms; indicated a depressed individual; well below average verbal ability, experiencing persistent shoulder pain and fatigue; describes fairly frequent strong heart palpitations, pain in the chest, which resembles attacks of anxiety; memory function is on weak side; immediate memory for digits on weak side; immediate recall of meaningful verbal material is much less than average; difficulty grasping the instructions for serial 3 s addition; not able to perform serial 7 s subtraction; attempting reverse recitation of the months reached October and cannot go beyond; scope of retained old information limited; cannot name any continents; judgment concerning social matters uninformed, slanted by impulsivity and excitement and erroneous; questioning concerning social relations brings out he has one trustworthy friend; fearful concerning his health; sleeps poorly; depressive disorder with pain, sub average verbal ability, complaints of shoulder pain; Axis V: GAF 52

Mental RFC

5/20/09 Markedly limited: ability to understand and remember detailed instructions; ability to carry out detailed instructions; ability to interact appropriately with general public

I. Basic Information

is a 43 year 8 month old male who filed for concurrent Title II and Title XVI disability benefits with a protective filing date of March 4, 2009. He has an admirable earnings record which extends his insured status until March 31, 2011. has met his obligation to provide the available medical records in support of his contention that he is unable to perform work activity of Substantial Gainful Activity (SGA) magnitude in a competitive employment situation eight hours per day, five days per week, fifty weeks per year, (SSR 96-8p) and that his medical condition has been disabling since his onset date of January 1, 2007. His impairments significantly limit his ability to do basic work activities, have lasted longer than twelve months and are not expected to improve.

II. Determination of Disability

LISTING OF IMPAIRMENTS §12.05C

20 CFR 404.1526 states, For cases at the Administrative Law Judge or Appeals Council level, the responsibility for deciding medical equivalence rests with the Administrative Law Judge or Appeals Council.

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<u>However, this equivalence must first have the input by a medical expert appointed by the Commissioner before the United States Administrative Law Judge is authorized to make a finding of equivalency.</u>

appears to have a mental condition which is equivalent to Listing 12.05C Mental Retardation with a Full Scale IQ of 72 and other mental and physical impairments imposing additional and significant work-related limitations of function.

The representative argues: s equivalency to Listing 12.05C is argued using POMS §DI 24515.056(D)(c) which provides that slightly higher IQ s (e.g. 70-75) in the presence of other physical or mental disorders that impose additional and significant work-related limitations of function may support an equivalent determination.

has a Full Scale IQ of 72 which falls in the 3rd percentile of individuals his age. He may experience difficulty in keeping up with his peers in a wide variety of situations that require thinking and reasoning abilities. His Working Memory subtest scored a 71, which is also in the 3rd percentile of his peers. He had difficulty with two tasks that demand mental control, that is, attending and holding information in short-term memory while performing some operation of manipulation[xiv].

The Social Security Consultative Examiner, who evaluated mental impairments, found weak memory function, weak immediate memory for digits, and less than average immediate recall of meaningful verbal material. He had difficulty grasping instructions to add by three s and was unable to subtract by seven s. He exhibited limited retained old information, was unable to name any continents, and had uninformed judgment concerning social matters.[xv] With this information it is our opinion that the Disability Determination Division might have approved this case if they had further developed it by directing a CE to administer the WAIS-IV examination.

<u>OTHER PHYSICAL AND MENTAL LIMITATIONS SECOND LEG OF LISTING §12.05C</u>

has severe pain in bilateral shoulders and is unable to elevate his arms beyond shoulder level. The Social Security consultative examiner diagnosed probable bilateral subacromial bursitis which is acute and chronic. His grip strength was weak bilaterally. Range of motion examinations of bilateral shoulders reveal 90° out of 150° of abduction in supination and forward elevation.[xvi] exhibits functional limitations as he requires help putting a shirt over his head, fixing his hair and trimming his beard.[xvii]

The Social Security mental evaluation consultative examiner reports had a haunted look, talked in a small voice and had flat intonation which indicated a depressed individual. He described fairly frequent strong heart palpitations and pain in his chest which resembles attacks of anxiety. The physician evaluated him with a Global Assessment of Functioning (GAF) score of 52 which indicates moderate to severe symptoms and any moderate to severe difficulty in social or occupational functioning.

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III. Conclusion

has an admirable work history in spite of his significant mental limitations. He worked jobs requiring physical labor ability until he was no longer able to perform these positions due to pain and loss of strength in his bilateral upper extremities. does not have the funds or medical insurance to seek medical care, but there seems to be ample medical evidence that his condition is equivalent to Listings of Impairments §12.05C.

However, the United States Administrative Law Judge is not at liberty to make an equivalency finding without the opinion of a medical expert of record, which the record does not have included therein. Section 404.1526

Accordingly, the United States Administrative Law Judge will conclude there is sufficient evidence by preponderance thereof to conclude that the claimant is functional below the sedentary level as provided in Social security Ruling 96-8p.

It appears that his residual functional capacity (RFC) is significantly compromised, taking into account the severe mental impairments and mental limitations imposed, combined with the significant limitations of his upper extremities. These conditions would reasonably reduce the occupational base at all levels of functioning and the unskilled work base would be significantly eroded. Work activity at the SGA level, at an acceptable production rate pace, on a sustained basis, (SSR 96-8p) would reasonably be precluded and beyond his capability.

TEST IS NOT THAT CLAIMANT IS ENTITLED TO THE BENEFIT OF DOUBT IN REGARD TO EACH DECISION MADE

The representative argues that the claimant is entitled to the benefit of doubt in regard to each decision made herein which is not true. The test is by the substantial evidence rule. (See SSR 82-34c. Sections 216(i) and 223(d) (42 U.S.C. 416(i) and 423(d) The regulations used to make disability determinations under titles II and XVI of the Social Security Act were recodified effective August 20, 1980. See 45 FR 55566-55634 (1980) (recodified in 20 CFR 404.1501-404.1598 and 20 CFR 416.901-416.996). The regulations cited in this ruling have been renumbered and rewritten as part of the recodification, but not substantively changed. See § 404.1560-§ 404.1569 and Rule 202.10, Appendix 2, Subpart P of Regulations No. 4.)

The Court in *Blalock v. Richardson,* 483 F.2d 773, 775 (4th Cir. 1972), stated:

> The scope of judicial review by the federal courts is specific and narrow under §205(g) of the Act. That section provides that '. . . the findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive . . .' The fact that the record as a whole might support an inconsistent conclusion is immaterial, for the language of § 205(g) precludes a *de novo* judicial proceeding and requires that the court uphold the Secretary's decision even should the court disagree with such decision as long as it is supported by 'substantial evidence.'

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The only time such a test of doubt is applied is in a criminal case where the claimant must be found guilty beyond a reasonable doubt. Certainly a Social Security Disability case is not a criminal case, and clearly if any doubt had to be resolved in favor of the claimant, the test would be even greater than that provided in criminal cases. In a civil case, the test is by preponderance of the evidence, certainly not as strict a burden of proof as in a criminal case. A social security disability case is classed as a special proceeding and obviously the burden of proof is closer to that of a civil proceeding than it is to a criminal one.

Accordingly, the United States Administrative Law Judge must conclude that the claimant s representative assertions that all doubts must be resolved in favor of the claimant is simply put a misstatement of the law. To so hold would amount to a determination that no hearing was even necessary as all doubt would have to be resolved in the claimant s favor. That is not the law. If the substantial evidence rule is difficult to understand, many simply apply the preponderance of the evidence rule when arguing before an United States Administrative Law Judge, but it is noted that the courts apply the substantial evidence rule on appeal.

The Act places the burden of establishing entitlement on the disability benefit claimant. It does provide, however, for consultative medical examinations that may provide needed medical evidence of impairment.

When a claimant has established that he or she has a serious impairment that prevents return to past relevant work, courts hold that the burden shifts to the Agency to establish that there is other work that a person with such impairments and the claimant s vocational characteristics can perform.

These burden of proof rules are structured by a sequential evaluation process that lays out five distinct stages in the determination. Stages one through four lie in the zone where the burden is on the claimant. They include: (1) the preliminary question whether, despite impairments, the claimant is, in fact, engaged in substantial gainful activity, (2) the determination whether the claimant has an impairment of sufficient severity to interfere with the ability to perform work activities, (3) a comparison of the claimant s medical impairments with the listing of numerous conditions warranting a conclusion of disability, and (4) a determination whether the claimant has the ability to perform past relevant work. In stage five where the issue is whether there is other work that a person with the claimant s characteristics can do the burden is on the Agency but in any case covered by the Medical-Vocation Guidelines, the guidelines themselves may meet that burden. In cases not governed by the guidelines, there must be other evidence.

These five stages operate in sequence. Evidence that would be relevant or even dispositive at a later stage will not prevent a contrary decision at an earlier one. The regulations lay out this process in great detail. Social Security Ruling SSR No. 86-8 provides explanation.

Courts employing the substantial evidence standard have developed other more specific burden of proof or evidentiary rules, such as rules according special weight to medical testimony or reports coming from the claimant s treating physician.

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It is certainly reasonable to conclude that [redacted] mental impairments would interfere with his ability to focus on a task and complete it in an acceptable period of time. A decision that he is disabled as alleged is in full compliance with the intent and purpose of Social Security Law and Regulations.

After considering the evidence of record, the undersigned finds that the claimant s medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the claimant s statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The State agency medical consultants physical assessments and psychological consultants mental assessments are given little weight because the State agency consultants did not adequately consider the claimant s subjective complaints or the combined effect of the claimant s impairments.

7. **The claimant is unable to perform any past relevant work (20 CFR 404.1565 and 416.965).**

8. **The demands of the claimant s past relevant work exceed the residual functional capacity.**

9. **The claimant was a younger individual age 18-44 on the established disability onset date (20 CFR 404.1563 and 416.963).**

10. **The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564 and 416.964).**

11. **The claimant s acquired job skills do not transfer to other occupations within the residual functional capacity defined above (20 CFR 404.1568 and 416.968).**

12. **Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c), 404.1566, 416.960(c), and 416.966).**

In determining whether a successful adjustment to other work can be made, the undersigned must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11). When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decision-making unless there is a rule that directs a conclusion of disabled without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If the claimant has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decision-making (SSR 85-15).

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If the claimant had the residual functional capacity to perform the full range of sedentary work, considering the claimant s age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.28. However, the additional limitations so narrow the range of work the claimant might otherwise perform that a finding of disabled is appropriate under the framework of this rule. This conclusion is supported by Social Security Ruling(s) 96-9p.

13. The claimant has been under a disability as defined in the Social Security Act since January 1, 2007, the alleged onset date of disability (20 CFR 404.1520(g) and 416.920(g)).

DECISION

Based on the application for a period of disability and disability insurance benefits filed on March 4, 2009, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act since January 1, 2007.

Based on the application for supplemental security income filed on March 5, 2009, the claimant has been disabled under section 1614(a)(3)(A) of the Social Security Act since January 1, 2007.

The component of the Social Security Administration responsible for authorizing supplemental security income will advise the claimant regarding the nondisability requirements for these payments, and if eligible, the amount and the months for which payment will be made.

Medical improvement is expected with appropriate treatment. Consequently, a continuing disability review is recommended in 12 months.

A determination to appoint a representative payee to manage payments in the claimant s interest is recommended.

/s/ W. Howard O'Bryan Jr.
W. Howard O'Bryan, Jr. (0453)
Administrative Law Judge

October 28, 2009
Date

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i Title II of the Social Security Act is administered by the Social Security Administration. Title II appears in the United States Code as §§401-433, subchapter II, chapter 7, Title 42. http://www.ssa.gov/OP_Home/ssact/title02/0200.htm[iii]

ii W. HowardO Bryan,Jr., (0453),UnitedStatesAdminktrativeLaw Judge, SocialSecurityAdministrationOffice of Adjudicationand Review. Whomay preside: 5 USC 556(b);Powersof the presidingofficer: 5 USC 556(c);Specialrole of the AdministrativeLawJudgein Social Security:Hecklerv. Campbell 461 U.S. 458,471, 103 S.Ct. 1952, 1959, 1 S.S.R.S. 3, 10, CCH¶ 14,585(1983)Dixonv. Heckler 811 F.2d 506, 510, 16 S.S.R.S. 279, 283 (10thCir. 1987),Jamesv. Bowen 793 F.2d 702, 704-705, 14 S.S.R.S.

87, 89-90. CCH ¶ 17,071 (5th Cir. 1986). Cannon v. Harris, 651 F.2d 513 (7th Cir. 1981); Coulter v. Weinberger 527 F.2d 224 (3rd Cir. 1975) (Administrativd Law Judge must develop full record where claimant not represented by counsel); But see, Kane v. Heckler 731 F.2d 1216, 4 S.S.R.S.340, CCH ¶ 15,324 (5th Cir. 1984), Dozier v. Heckler 754 F.2d 274 (8th Cir. 1985); Jordan v. Heckler 835 F.2d 1314, 20 S.S.R.S. 158, CCH ¶ 17,808 (10th Cir. 1987), (Administrativd Law Judge must develop full record even if claimant represented by counsel); Social Security Ruling 71-23; Social Security Regulations 20 CFR §§ 404.944 and 416.1444, see also, 20 CFR 404.950, 404.951, 416.1450 and 416.1451 Social Security Act, §§ 305(b) and 1631(c)(1)

iii **20 Code of Federal Regulations Ch. III (4-1-06 edition) section 404.948: Deciding a case without an oral hearing before an administrative law judge.** (*a*) *Decision wholly favorable.* If the evidence in the hearing record supports a finding in favor of you and al the parties on every issue, the Administrative Law Judge may issue a hearing decision without holding an oral hearing.

iv

Vocational Information

Jobs Worked in the Last 15 years

Job Title	Type of Business	From	To
1. Forklift operator	Various	1990	2006
2. Manual Labor	Liquor/alcohol	Unknown	one week

Ticket/Program Information - Initial Level

Participate in Ticket program or another program? No

Ticket/Program Information - Reconsideration Level

Participate in Ticket program or another program? No

Ticket/Program Information - Hearing Level

Participate in Ticket program or another program? No

Additional Information

Working now?	No
Stopped working because:	Because of my condition
Stopped working when:	12/31/2006
Alleged Impairments:	Bad right hip, Bad right leg, Left shoulder injury, Diabetes, Neuropathy hands & feet, Poor memory, Blurred vision in right eye, Dizziness 2-3 times a day Pain & weakness in hip, leg, shoulder. Neuropathy in hands and feet. Poor memory, blurred vision right eye. Dizziness. Hip leg shoulder pain diabetic neuropathy poor memory

v **9.08 Diabetes mellitus. With:**

A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and Station (see 11.00C); or

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B. Acidosis occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO2 or bicarbonate levels); or

C. Amputation at, or above, the tarsal region due to diabetic necrosis or peripheral arterial disease; or

D. Retinitis proliferans; evaluated under the visual impairment under the criteria in 2,02, 2.03, or 2.04.

ML-1100C provides: ... Persistent disorganization or motor function is the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which may occur singly or in various combination, frequency provides the sole or partial basis for decision in cases of neurological impairment. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands, and arms.

ML-2.02 provides ... Impairment of central visual acuity. Remaining vision in the better eye after best correction is 20/200 or less.

ML-2.03 provides ... Contraction of the peripheral visual fields in the better eye.

A. To 10° or less from the point of fixation; or

B. So the widest diameter subtends an angle no greater than 20°; or

C. To 20 percent or less visual field efficiency.

ML-2.04 provides ... Loss of visual efficiency. Visual efficiency of the better eye after best correction 20 percent or less. (The percentage of remaining visual efficiency = the product of the percent of remaining visual efficiency and the percent of remaining central visual field efficiency.)

[vi] 12.04 *Affective disorders*: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders are met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

a. Anhedonia or pervasive loss of interest in almost all activities; or

b. Appetite disturbance with change in weight; or

c. Sleep disturbance; or

d. Psychomotor agitation or retardation; or

e. Decreased energy; or

f. Feelings of guilt or worthlessness; or

g. Difficulty concentrating or thinking; or

h. Thoughts of suicide; or

i. Hallucinations, delusions, or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

a. Hyperactivity; or

b. Pressure of speech; or

c. Flight of ideas; or

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d. Inflated self-esteem; or

e. Decreased need for sleep; or

f. Easy distractibility; or

g. Involvement in activities that have a high probability of painful consequences which are not recognized; or

h. Hallucinations, delusions or paranoid thinking; or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

3 12.05 *Mental retardation:* Mental retardation refers to significantly sub average general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22. The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded; OR

B. A valid verbal, performance, or full scale IQ of 59 or less; OR

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function; OR

D. A valid verbal, performance, or full scale IQ of 60 through 70, resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

See Next Page

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration.

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viii

MENTAL RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT

NAME	SOCIAL SECURITY NUMBER
[redacted]	[redacted]

CATEGORIES *(From 1C of the PRTF)*	ASSESSMENT IS FOR:
12.04	☒ Current Evaluation ☐ 12 Months After Onset: ☐ Date Last Insured: _____ *(Date)* _____ *(Date)* ☐ Other: _____ *(Date)* to _____ *(Date)*

I. SUMMARY CONCLUSIONS

This section is for recording summary conclusions derived from the evidence in file. Each mental activity is to be evaluated within the context of the individual's capacity to sustain that activity over a normal workday and workweek, on an ongoing basis. Detailed explanation of the degree of limitation for each category (A through D), as well as any other assessment information you deem appropriate, is to be recorded in Section III (Functional Capacity Assessment).

If rating category 5 is checked for any of the following items, you MUST specify in Section II the evidence that is needed to make the assessment. If you conclude that the record is so inadequately documented that no accurate functional capacity assessment can be made, indicate in Section II what development is necessary, but DO NOT COMPLETE SECTION III.

	Not Significantly Limited	Moderately Limited	Markedly Limited	No Evidence of Limitation in this Category	Not Ratable on Available Evidence
A. UNDERSTANDING AND MEMORY					
1. The ability to remember locations and work-like procedures.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
2. The ability to understand and remember very short and simple instructions.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
3. The ability to understand and remember detailed instructions.	1. ☐	2. ☐	3. ☒	4. ☐	5. ☐
B. SUSTAINED CONCENTRATION AND PERSISTENCE					
4. The ability to carry out very short and simple instructions.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
5. The ability to carry out detailed instructions.	1. ☐	2. ☐	3. ☒	4. ☐	5. ☐
6. The ability to maintain attention and concentration for extended periods.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
7. The ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
8. The ability to sustain an ordinary routine without special supervision.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
9. The ability to work in coordination with or proximity to others without being distracted by them.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
10. The ability to make simple work-related decisions.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐

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[redacted]

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	Not Significantly Limited	Moderately Limited	Markedly Limited	No Evidence of Limitation in this Category	Not Ratable on Available Evidence
Continued – SUSTAINED CONCENTRATION AND PERSISTENCE					
11. The ability to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
C SOCIAL INTERACTION					
12. The ability to interact appropriately with the general public.	1. ☐	2. ☐	3. ☒	4. ☐	5. ☐
13. The ability to ask simple questions or request assistance.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
14. The ability to accept instructions and respond appropriately to criticism from supervisors.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
15. The ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
16. The ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
D. ADAPTATION					
17. The ability to respond appropriately to changes in the work setting.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
18. The ability to be aware of normal hazards and take appropriate precautions.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
19. The ability to travel in unfamiliar places or use public transportation.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐
20. The ability to set realistic goals or make plans independently of others.	1. ☒	2. ☐	3. ☐	4. ☐	5. ☐

x

III. FUNCTIONAL CAPACITY ASSESSMENT
Record the elaborations on the preceding capacities in this section. Complete this section ONLY after the SUMMARY CONCLUSIONS section has been completed. Explain your summary conclusions in narrative form. Include any information which clarifies limitation or function. Be especially careful to explain conclusions that differ from those of treating medical sources or from the individual's allegations.

Claimant can perform simple tasks with routine supervision, can relate to supervisors and peers on a superficial work basis, cannot relate to the general public, can adapt to a work situation.

[xi]

C. MANIPULATIVE LIMITATIONS

☐ None established. (Proceed to section D.)

	LIMITED	UNLIMITED
1. Reaching all directions (including overhead)	☒	☐
2. Handling (gross manipulation)	☐	☒
3. Fingering (fine manipulation)	☐	☒
4. Feeling (skin receptors)	☐	☒

[xii] **Social security Ruling 96-8p reads in pertinent part:**

. . .

Ordinarily, RFC is the individual's *maximum* remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis, and the RFC assessment must include a discussion of the individual's abilities on that basis. A "regular and continuing basis" means 8 hours a day, for 5 days a week, or an equivalent work schedule.

. . .

The combined effect of the claimant s symptoms results in physical limitations which deprive the claimant of the ability to do sustained work activities in an ordinary work setting on a regular and continuing basis (SSR 96-8p). She cannot engage in work activity 8 hours a day, for 5 days a week, or an equivalent work schedule (SSR 96-8p). The Administrative Law Judge therefore concludes that there are no jobs existing within the national economy which the claimant can perform in an ordinary work setting on a regular and continuing basis, that is: 8 hours a day, for 5 days a week, or an equivalent work schedule (SSR 96-8p).

[xiii]

PHYSICAL RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT

CLAIMANT: [redacted]	SOCIAL SECURITY NUMBER: [redacted]
NUMBERHOLDER (IF CDB CLAIM):	

PRIMARY DIAGNOSIS:	RFC ASSESSMENT IS FOR:
DM, untreated	☒ Current Evaluation ☐ Date 12 Months After Onset:
SECONDARY DIAGNOSIS: ESSENTIAL HYPERTENSION, untreated	☐ Date Last Insured: _____ (Date) _____ (Date)
OTHER ALLEGED IMPAIRMENTS: DIABETIC NEUROPATHY, by hx [redacted]	☐ Other (Specify):

[xiv] WAIS-IV administered by [redacted] Psychometrist, dated 9/15/2009

[xv] Social Security Consultative Examination

[xvi] DDD Consultative examination dated 3/27/2009 by [redacted]

[xvii] Adult Function Report dated 3/13/2009

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SOCIAL SECURITY ADMINISTRATION

Refer To [redacted]

Office of Disability Adjudication and Review
301 Nw 6th St
3rd Floor West
Oklahoma City, OK 73102

Date: October 10, 2008

[redacted]

NOTICE OF DECISION – FULLY FAVORABLE

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

This Decision is Fully Favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

The Appeals Council May Review The Decision On Its Own

The Appeals Council may decide to review my decision even though you do not ask it to do so. To do that, the Council must mail you a notice about its review within 60 days from the date shown above. Review at the Council's own motion could make the decision less favorable or unfavorable to you.

If You Disagree With The Decision

If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeals Council.

How to File an Appeal

To file an appeal you or your representative must request that the Appeals Council review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the **Appeals Council, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22041-3255**. Please put the Social Security number shown above on any appeal you file.

Permanent Subcommittee on Investigations
EXHIBIT #12

Time to File an Appeal

To file an appeal, you must file your request for review **within 60 days** from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time to Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider **with** your request for review.

How an Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J).

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The Council may review your case for any reason. It **will** review your case if one of the reasons for review listed in our regulation exists. Section 404.970 of the regulation lists these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

If No Appeal and No Appeals Council Review

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

See Next Page

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (405)605-3000. Its address is Social Security, 2615 Villa Prom, Shepherd Mall, Oklahoma City, OK 73107.

W. Howard O'Bryan, Jr. (0453)
United States of America
Administrative Law Judge
Federal Administrative Judiciary

cc:

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF	CLAIM FOR
[redacted]	Period of Disability and Disability Insurance Benefits
(Claimant)	
(Wage Earner)	[redacted]
	(Social Security Number)

I approve the fee agreement between the claimant and her representative subject to the condition that the claim results in past-due benefits. My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise excepted. I neither approve nor disapprove any other aspect of the agreement.

YOU MAY REQUEST A REVIEW OF THIS ORDER AS INDICATED BELOW

Fee Agreement Approval: You may ask us to review the approval of the fee agreement. If so, write us within 15 days from the day you get this order. Tell us that you disagree with the approval of the agreement and give your reasons. Your representative also has 15 days to write us if he or she does not agree with the approval of the fee agreement. Send your request to this address:

Joan E Parks Saunders, J.D.
Regional Chief Administrative Law Judge
SSA ODAR Regional Ofc
Rm 460
1301 Young St
Dallas, TX 75202

Fee Agreement Amount: You may also ask for a review of the amount of the fee due to the representative under this approved fee agreement. If so, please write directly to me as the deciding Administrative Law Judge within 15 days of the day you are notified of the amount of the fee due to the representative. Your representative also has 15 days to write me if he/she does not agree with the fee amount under the approved agreement.

See Next Page

[redacted]

You should include the social security number(s) shown on this order on any papers that you send us.

/s/ W Howard O'Bryan Jr.

W. Howard O'Bryan, Jr. (0453)
Administrative Law Judge

October 10, 2008
Date

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability and Disability Insurance Benefits[1]
(Wage Earner)	[redacted] (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before the undersigned[2] on a request for hearing dated August 25, 2008. The evidence of record supports a ***fully favorable decision; therefore no hearing[3] has been held*** (20 CFR 404.948(a)). The claimant is represented by ***Terry Gust, an attorney.***

The claimant is alleging disability since June 1, 2005.

ISSUES

The issue is whether the claimant is disabled under sections 216(i) and 223(d) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

There is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through June 30, 2009. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful review of the entire record, the undersigned finds that the claimant has been disabled from June 1, 2005 through the date of this decision. The undersigned also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

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1 Title II of the Social Security Act is administered by the Social Security Administration. Title II appears in the United States Code as §§401-433, subchapter II, chapter 7, Title 42. http://www.ssa.gov/OP_Home/ssact/title02/0200.htm[111]

2 **W. Howard O'Bryan, Jr., (0453), United States Administrative Law Judge,** Social Security Administration, Office of Adjudication and Review. Who may preside: 5 USC 556(b); Powers of the presiding officer: 5 USC 556(c); Special role of the Administrative Law Judge in Social Security: Heckler v. Campbell, 461 U.S. 458, 471, 103 S.Ct. 1952, 1959, 1 S.S.R.S. 3, 10, CCH ¶ 14,585 (1983);Dixon v. Heckler, 811 F.2d 506, 510, 16 S.S.R.S. 279, 283 (10th Cir. 1987) James v. Bowen, 793 F.2d 702, 704-705, 14 S.S.R.S. 87, 89-90, CCH ¶ 17,071 (5th Cir. 1986), Cannon v. Harris, 651 F.2d 513 (7th Cir. 1981); Coulter v. Weinberger, 527 F.2d 224 (3rd Cir. 1975) (Administrative Law Judge must develop full record where claimant not represented by counsel); But see, Kane v. Heckler, 731 F.2d 1216, 4 S.S.R.S. 340, CCH ¶ 15,324 (5th Cir. 1984), Dozier v. Heckler, 754 F.2d 274 (8th Cir. 1985); Jordan v. Heckler, 835 F.2d 1314, 20 S.S.R.S. 158, CCH ¶ 17,808 (10th Cir. 1987), (Administrative Law Judge must develop full record even if claimant represented by counsel); Social Security Ruling 71-23; Social Security Regulations 20 CFR §§ 404.944 and 416.1444, see also, 20 CFR 404.950, 404.951, 416.1450 and 416.1451; Social Security Act, §§ 205(b) and 1631(c)(1).

3 **20 Code of Federal Regulations Ch. III (4-1-06 edition) section 404.948: Deciding a case without an oral hearing before an administrative law judge.** *(a) Decision wholly favorable.* If the evidence in the hearing record supports a finding in favor of you and al the parties on every issue, the Administrative Law Judge may issue a hearing decision without holding an oral hearing.

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APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e)). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e) and 404.1545; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f)). If the claimant has the residual functional capacity to do her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g)), the undersigned must determine whether the claimant is able to do any other work considering her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, she is not disabled: If the claimant is not able to do other work and meets the duration requirement, she is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g) and 404.1560(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. The claimant's date last insured is June 30, 2009.

2. The claimant has not engaged in substantial gainful activity since June 1, 2005, the alleged onset date (20 CFR 404.1520(b) and 404.1571 *et seq.*).

3. The claimant has the following severe impairment(s): Disorders of back[4] discogenic and degenerative (7240), affective (mood) disorders (2960), etc., etc., etc.[5],

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[4] 1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitations of motion of the spine, Motorola's (atrophy with associated muscle weakness or muscle weakness) accompanied by century or reflex losses and, if there is involvement of the low back, policy straight-leg raising test (sitting and supine);

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OR

B. Spinal arachnoiditis, confirmed by operative notes or pathology reports of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every two hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic non- radicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B 2b.

5

Allegation(s)

Impairments, Limitations and Pain - Initial Level

Alleged Impairments: Disc degenerative disease. Depression. Anxiety.

Limitations: I AM UNABLE TO SIT OR STAND FOR PERIODS OF TIME.

Pain/Other Symptoms: Yes

Impairments First Interfered With Ability to Work: 05/31/2007

Height: ***5' 4"***

Weight: ***200 lbs.***

Effect on Work - Initial Level

Ever Worked: Yes

Working Now: No

When Stopped: 05/31/2005

Stopped Working Because: I STOPPED BECAUSE OF MY DISABILITY.

Work After Impairment First Interfered: No

Impairments, Limitations and Effects - Reconsideration Level

Any Changes in Condition: Yes

Changes in Condition: Pain in neck is increasing; am considering surgery to correct. Have scheduled EMG test with Dr. [redacted] for Aug. 2nd to determine condition of ulna nerve in left arm and consultation of the results with Dr. [redacted] Aug 9th. New pain in left lower back and left leg has started; have an appt. with Dr. [redacted] on Aug. 13the to consult with concerning second opinion regarding Dr. [redacted] opinion(s) and referral for alternative treatment for pain in lower back, including new pain in left leg and left side.

Date Occurred: 05/2007

Any New Illnesses or Injuries: No

Any New Limitations: Yes

New Limitations: I am still under the care of Dr. [redacted] for depression and anxiety; some days I cannot fully function due to lack of sleep or sense of foreboding. I am not always self-motivated to accomplish simple tasks such as light house work or errands. I can easily miss doctor appointments due to "dumb" things like locking myself out of the house, or simply forgetting what day it is. My physical limitations vary depending on the pain levels; some days I spend most of my time on "home therapy" such as ice packs and a tens machine prescribed by Dr. [redacted] I was confined to a neck brace which limited my driving for the past six weeks; out of frustration I am "weaning" myself from it. It is not very convenient to be without the use of a car and that adds to the sense of uselessness. Severe headaches often result from neck pain and can lead to nausea or incapacitation.

Date Occurred: 05/07

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How Condition Affects Ability to Care for Personal Needs: No effect

How Daily Activities Changed: My left hand continues to be numbed by the nerve being pinched,or damages, and I can't always use it to it's full capability. My walking is now limited due to the new pain in my leg; the pain begins shooting into my hip and the leg "gives" and I experience the sensation that it may snap or break. Sleeping is difficult, as I have to change positions frequently to give relief to my back. I try to avoid taking Ambien as I do not want to become dependent.

Client Remarks - 3441: I am appealing the denial of benefits based on my belief: Not all of the medical information I provided was taken into consideration; my psychiatrist, previous neurosurgeon, and previous pain management physician were not listed as having entered evidence. While all medical evidence may not be crucial, the file should be complete to base your judgment on all facts. I also believe I should have the right to request a personal hearing; to make a fair assessment all interested parties should meet to discuss the details. I believe not all the facts can truly be written down and expressed, and you need to see and hear exactly what my daily life is like due to my physical conditions at this point in my life.

Work Since Original Claim Filed: No

Submitting New Evidence: No

Reason Appeal Requested: I AM STILL DISABLED

Impairments, Limitations and Effects - Hearing Level

Submitting New Evidence: No

Reason Appeal Requested: THE CLAIMANT WISHES TO APPEAL HER DATE OF ONSET. TH E CLAIMANT HAS NOT WORKED SINCE 06/01/05. THE CLAIMANT'S MEDICAL RECORDS SUB-STANTIATE THE 06/01/05 ONSET DATE.

[redacted] ***itial Level***

Source Type: Doctor/HMO/Therapist

Source Name: [redacted] MD

Address: [redacted]

First Visit: 03/13/2007

Last Visit: 06/07/2007

Next Appt: 06/28/2007

Reason for Visits: depression

Treatment: meds and counseling

Medications: CYMBALTA

[redacted] - ***Initial Level***

Source Type: Doctor/HMO/Therapist

Source Name: [redacted] MD

[redacted] PAIN MANAGEMENT

Address: [redacted]

Voice Phone: 405-736-[redacted]

First Visit: 08/23/2006

Last Visit: 05/07/2007

Next Appt: ONGOING

Reason for Visits: PAIN MANAGEMENT

Treatment: MEDS

.....

Medical Tests: BONE DENSITY

Date: 06/06/2007

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[redacted] - *Initial Level*

Source Type: Doctor/HMO/Therapist
Source Name: [redacted] MD
MEDICAL RECORDS
Address: [redacted]
Voice Phone: [redacted]
U.S. Fax: [redacted]
First Visit: [redacted]
Last Visit: 05/30/2007
Next Appt: as needed
Reason for Visits: NEUROSURGEON
Treatment: MEDS
Medications: ALEVE , ROBAXIN

Medical Tests: MRI
Body Part: SPINE
Date: 05/2007

[redacted] *Level*

Source Type: Doctor/HMO/Therapist
Source Name: [redacted] MD
Address: [redacted]
Voice Phon: [redacted]
First Visit: 1999
Last Visit: 05/01/2007
Next Appt: na
Reason for Visits: pcp
Treatment: meds
Medications: Ambien , Compazine , Lipitor , Meclizine , Nasonex , Prilosec , Singulair , Xanax , ADVAIR , ASTELIN , HCTZ , TOPOMAX , VERAPAMIL

[redacted] *econsideration Level*

Source Type: Doctor/HMO/Therapist
Source Name: [redacted] MD
Address: [redacted]
OKLAHOMA CITY, OK 73112
Voice Phone: 405-949[redacted]
First Visit: 08/02/07
Last Visit: unk
Next Appt: unk
Reason for Visits: EMG
Treatment: EMG

Medical Tests: EMG
Date: 08/02/07

[redacted] *Reconsideration Level*

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Source Type: Doctor/HMO/Therapist
Source Name: [redacted] MD
Address: [redacted]
First Visit: 03/13/2007
Last Visit: 07/19/07
Next Appt: 08/16/07
Reason for Visits: She is treating me for depression and anxiety.
Treatment: Verbal therapy
Medications: CYMBALTA

[redacted] *Reconsideration Level*

Source Type: Doctor/HMO/Therapist
Source Name: [redacted] MD
[redacted] PAIN MANAGEMENT
Address: [redacted]
Voice Phone: 405-736-[redacted]
First Visit: 08/23/2006
Last Visit: 05/07
Next Appt: none
Reason for Visits: Epidural injections for pain in lower back right side.
Treatment: Epidural injections

[redacted] *Reconsideration Level*

Source Type: Doctor/HMO/Therapist
Source Name: [redacted] MD
MEDICAL RECORDS
Address: [redacted]
Voice Phone: [redacted]
U.S. Fax: [redacted]
First Visit: 05/02/2007
Last Visit: 05/30/07
Next Appt: 05/09/07
Reason for Visits: Numbness in left arm/hand and pain in neck.
Treatment: Prescribed Robaxin, TENS machine , neck brace, ENG test, MRI and X-rays to determine extent of disc disease.
Medications: ALEVE , ROBAXIN

.....

Medical Tests: X-ray
Body Part: Head and neck
Date: 05/09/07

[redacted] *Reconsideration Level*

Source Type: Doctor/HMO/Therapist
Source Name: [redacted] MD
Address: [redacted]
Voice Phone: [redacted]

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The claimant has the following degree of limitation in the broad areas of functioning set out in the disability regulations for evaluating mental disorders and in the mental disorders listings in 20 CFR, Part 404, Subpart P, Appendix 1: mild restriction of activities of daily living; moderate difficulties in maintaining social functioning; moderate difficulties in maintaining concentration, persistence or pace; and one to two episodes of decompensation.

The claimant's mental impairment(s) does not satisfy the paragraph "C" criteria of the applicable mental disorder listing(s).

4. The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d)).

5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(a) except the record shows the claimant is functional below the sedentary level for any sustained, continual or regular activity.

First Visit: 1999
Last Visit: 05/07/07
Next Appt: 08/13/07
Reason for Visits: Primary care
Treatment: All general ailments and specialized referrals.
Medications: Ambien, Compazine, Lipitor, Meclizine, Nasonex, Prilosec, Singulair, Xanax, ADVAIR, ASTELIN, HCTZ, Relpax, TOPOMAX, VERAPAMIL

[redacted] *consideration Level*

Source Type: Hospital/Clinic
Source Name: [redacted]
Address: [redacted]
Voice Phone: [redacted]
U.S. Fax: [redacted]
Next Appt: none
Outpatient First Visit: 05/09/07
Outpatient Last Visit: 06/6/07
Reason for Visits: MRI, x-rays or other tests only.
Treatment: testing

Medical Tests: Bone density scan
Date: 06/06/07

Medical Tests: MRI
Body Part: neck
Date: 05/09/07

(20 CFR 404.1520(c)).

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In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

[redacted] M.D.
Diplomat
American Board of Psychiatry and Neurology
American Board of Forensic Medicine
American Board of Disability Analysts
[redacted]

SOCIAL SECURITY DISABILITY EVALUATION REPORT
NAME: [redacted]
SSN [redacted]
CLAIM #: [redacted]
DATE OF BIRTH: [redacted]
DATE OF EVALUATION: 04/12/2008
IDENTIFYING INFORMATION [redacted] is a fifty-five-year-old, Caucasian, married, unemployed female who comes in for a Social Security disability evaluation based on her mental health. Her identification was verified and the HIPAA form was completed before the interview.
HISTORY [redacted] reports that she has degenerative joint disease of her cervical and lumbar spine, is in constant pain since 2002, caused her to be unemployed since 2005. This is why she is seeking this disability benefit.
Historically she had her first psychiatric treatment at the age of twenty five. At that time she was treated with medication and counseling for depression. Since then until now she had not had any psychiatric hospitalization, never contemplated or attempted suicide, and denied substance abuse problem or treatment for it. Her mental healthcare is currently being provided by Dr. [redacted] for the last about one and a half years and she is being treated for depression and anxiety (296.20 and 300.00) with medication and counseling.
On specific questioning [redacted] reports she is sad all the time for the quality of her current life; mad because she cannot work or care for her elderly mom and ailing father-in-law, and anxious about what is coming next. Lately her appetite has been poor, resulting in a fifty pound weight loss. She is sleeping about four hours at night, which has remained unchanged of late; she has a difficult time in going to sleep because her racing mind will not calm down and her ears are ringing all the time; she has a difficult time in maintaining her sleep because "anything and everything can wake me up", and depending on her night, her energy level and motivation are very variable. Spare time activity is working on scrapbooks or household chores. Social life involves church. Pleasure life involves watching television or listening to music. Sex life is "normal". Crying spells are intermittent in nature, anger may have explosive qualities, while she denies any death wish. PAST MEDICAL HISTORY: She reports to have degenerative joint disease of the lumbar and cervical spine, recurrent headaches, bronchial asthma, high cholesterol,

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GERD, hysterectomy, had Cervical disc surgery in 1994, 1995, and 2007, ulnar nerve replacement surgery on the left elbow, and gallbladder surgery.
She reports to have been treated for Major Depression in the past, but never for Bipolar Disorder, Schizophrenia, Panic Disorder, or Post Traumatic Stress Disorder.
Review of her medical records suggests Dr. [redacted] has been treating her for Major Depression, recurrent and chronic pain syndrome.
CURRENT MEDICATIONS: Cymbalta 120 mg daily, Wellbutrin SR 1/2 tablet twice daily, Xanax on a pm basis, Ambien on a pm basis and Topamax twice daily. Her other medications include Lipitor, Prilosec, Advil, Astelin, Singulair, and Verapamil. She reports that she "sneaks in" Lortab from time to time for about the last two years and uses it for her pain management.
PERSONAL HISTORY: She was born in [redacted] and raised by both parents. She had an uneventful childhood and bachelor's degree in fine arts. She had her first job at the age of fifteen and last worked in 2005 when she was working as the office manager for four months, hated her boss, quit her job in 2005. Her first marriage ended in divorce after four months and is currently married to her second husband for the last twenty three years. She is living in Oklahoma City with her husband and is dependent financially on him.
FAMILY HISTORY: She has one brother and one sister. Her sister had alcohol problem. Her father died of suicide at the age of fifty and had alcohol problems.
MENTAL STATUS EXAM: [redacted] a fifty-five-year-old Caucasian female who is 5'4" tall and 185 pounds in body weight and came in two miles from her home to my office driving her... She looked much younger than her stated age, was reasonably well groomed, colorful in makeup and dress, jovial and did not appear to be in any acute distress.
-Speech had hyper-verbal qualities, but not pressured.
-Eye contact was 100%.
-Thought process was full of circumstantiality and tangentially, but no LOA or FOI.
-Thought content was devoid of any perceptual abnormalities.
-Mood was reportedly sad, mad, or anxious. However, she denies any features consistent with panic attacks or manic episodes.
-Affect was wide ranged and jovial.
-Insight appeared to be intact.
-Judgment has dependent and avoidant qualities.
-Cognitive testing reveals she was alert, oriented x 3 with intact registration, concentration, and abstract interpretation, but she had minor impairment of short term memory (she could recollect two out of three names in five minutes).
-Suicidal/homicidal ideas were denied today. DIAGNOSIS:

Axis I (1) Mood Disorder secondary to General Medical Condition
(2) History of Major Depression, recurrent Axis II Personality Disorder, NOS

Axis III History of degenerative joint disease of the lumbar and cervical spine, history of surgical treatment for her cervical spine x 3, recurrent headaches, bronchial asthma, and GERD

Axis IV Problems with employment and health

Axis V Current GAP: about 65-75
Last Year's GAF: not available

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CONCLUSION: A Social Security Disability Evaluation was completed today for [redacted] ed on clinical interview and review of her limited medical record. Strictly from the psychiatric standpoint, I believe she will meet the DSM-IV TR criteria for Major Depression. This could be a primary disorder, as reported by [redacted] or from her chronic pain (Mood Disorder secondary to General Medical Condition). This is a reasonably treatable psychiatric morbidity and can be aggressively treated with aggressive pharmacotherapy, psychotherapy, cognitive behavioral therapy, and vocational rehabilitation therapy. [redacted] reports she stopped working in 2005 because of chronic pain on the one hand and she hated her boss on the other hand. It is beyond my expertise to comment if such voluntary unemployment and/or chronic pain can be a reason for long term disability or not. Based on my cognitive testing of today I found her to be reasonably intact and hence believe she should be able to handle her o funds independently. [redacted] M.D. [redacted]
School of Medicine - University of Oklahoma, Oklahoma City, OK.

55 year old female alleges depression. She has a history of depressive symptoms treated with meds. No history of hospitalizations for decompensation. Current MSE, the claimant reports sadness due to her quality of life because she cannot work and anxiousness about her future. Her appetite has been poor, has had sleep disturbance, very variable energy level and motivation. Crying spells are intermittent in nature, anger may have explosive qualities, while she denies any death wish. On exam she is jovial and did not appear to be in any acute distress. Speech had hyper—verbal qualities, but not pressured. Eye contact was 100%. Thought process was full of circumstantiality and tangentially, but no LOA and FOL. Thought content was devoid of any perceptual abnormalities. Mood was reportedly sad, mad and anxious. Affect was wide ranged and jovial. Insight appeared to be intact. Judgment has dependent and avoidant qualities. Cognitive testing reveals she is alert, oriented X3 with intact registration, concentration and abstract interpretation, but she had minor impairment of STM. SI/HI was denied. Cognitive testing reveals she is alert, oriented X3 with intact registration, concentration and abstract interpretation, but she had minor impairment of STM. SI/HI was denied. Claimant can relate to others on a superficial work basis. Claimant can adapt to a work situation.

55 year old female alleges DDD, neck pain, lower back pain, left ulnar nerve pain. Current evidence shows her s/p 10/07 cervical fusion and s/p 10/07 left ulnar nerve cubital tunnel decompression secondary to compressive peripheral neuropathy. 2/14/08 f/u claimant decreased pinprick around old incision site on left elbow. Strength is intact at 5/5 in all major muscle groups. Reflexes are intact. C—spine x-rays show good stable fusion construct.

[redacted]
Office/Outpatient Visit
Visit Date: Thu. Aug 9. 2007 11:23 am
Provider: [redacted] MD (Assistant: [redacted] MA)
Location: [redacted] MD
Electronically signed by provider on 0910312007 04:45:46 pm Printed on 0311212008 at 12:35 pm.

SUBJECTIVE:
[redacted]s a 54-year-old female. This is a 2 months follow-up visit. Chief concern is neck pain and left upper extremity pain
HPI: [redacted]eturned today for flu evaluation. She has continued to have lifestyle limiting neck pain and L arm pain as well. She underwent a recent EMS which confirmed a left arm cubital syndrome without evidence of cervical radiculopathy. She also underwent a collar trial to evaluate concerns for adjacent segment disease at 04-5. 7-1. She had no clear changes in her symptoms while in the collar. Her pain continues to most aggravated with movement and activity. She has exhausted all reasonable conservative measures. She has no new problems.
ROS:
CONSTITUTIONAL: Positive for fatigue and night sweats. Negative for chills, fever, unintentional weight gain or unintentional weight loss.
EYES: Positive for use of glasses or contacts. Negative for blurred vision, eye drainage, eye pain or photophobia.
E/N/T: Positive for ear pain. Negative for diminished hearing, frequent epitasis. hoarseness or sore throat.
CARDIOVASCULAR: Positive for dizziness. Negative for chest pain, palpitations, pedal edema, tachycardia or varicosities.
RESPIRATORY: Negative for recent cough and chronic cough.
GASTROINTESTINAL: Positive for acid reflux symptoms. Negative for abdominal pain, anorexia, abdominal bloating. Hemorrhoids or melema.
SENITOURI NARY: Negative for dysuria. Hematuria. frequent UTI's and nocturia.
MUSCULOSKELETAL: Positive for back pain, joint stiffness and limb pain. Negative for Arthralgias or myalgias.
INTEGUMENTARY/BREAST: Negative for acne, atypical mole(s), extremely dry skin. fungal nail infection, rash, breast mass and breast tenderness.
NEUROLOGICAL: Positive for dizziness, headaches, memory loss, nausea, vomiting. paresthesias. tremor and weakness. Negative for ataxia. confusion, fainting, generalized pain, seizures, speech disorder or vertigo.
HEMATOLOGIC/LYMPHATIC: Positive for easy bruising. Negative for excessive bleeding.
ENDOCRINE: Positive for hot flashes, Negative for hair loss, temperature intolerances or polydipsia.
PSYCHIATRIC: Positive for anxiety, depression and sleep disturbance. Negative for mood swings. personality change or suicidal thoughts.
Past Medical History / Family History / Social History'
Past Medical History'
Hyperlipidemia: Hypercholesterolemia; dx'd in 2006:
Asthma: dx'd in 1994;
Gastroesophageal Reflux Disease: since 2000;
Rheumatoid Arthritis: since 2005;
Migraine Headaches: since 2002;
Depression/anxiety 1995
Surgical History:
Cholecystectomy: laparoscopic: 2000:
Hysterectomy: 1991:
ACDF 1995.1992;

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Foot surgery 2002:
Family History'
Father: Died at age 55; Cause of death was accidental death Tobacco/Alcohol/Supplements:
Tobacco: Currently smokes 1/2to 1 pack per day. 45yearspack-yearhistory. Non-drinker
Current Problems:
Arm pain
Neck pain
Immunizations:
None
Allergies:
Keflex:
Demerol HCI:
Codeine Phosphate:
Current Medications:
Advair Diskus 100)50 Inhalation Powder Inhale 1 puff(s) bid
Arabian 5mg Tablet Take 1 tablet(s) by mouth at bedtime pm
Astelin l37mcg/1 spray Nasal Spray 2 spray(s) in each nostril bid
Cymbalta 60mg Capsules Take 1 capsule(s) by mouth daily
Lipitor 20mg Tablet Take 1 tablet(s) by mouth daily
Nasonex 50mcg/actuation Nasal Spray 2 spray(s) in each nostril daily
Prilosec 20mg Capsules. Extended Release Take 1 capsule(s) by mouth day
Singulair 10mg Tablet Take 1 tablet(s) by mouth daily
Topamax 50mg Tablet Take 1 tablet(s) by mouth bid
Ultram 50mg Tablet Take 2 tablet(s) by mouth q 4 to 6 hr
Verapamil HG 120mg Capsules. Sustained Release Take 1 capsule(s) by mouth daily
Xanax 0.5mg Tablet 1 po qd pm
OBJECTIVE:
Vitals:
Current: 8)912007 11:25:52AM
Wt: 208.8 lbs
T: 98.3 F; BP: 116156mm Hg; P: 96 bpm: R: 14 bpm
Exams:
GENERAL: Patient is a well developed, moderately obese, female, in no apparent distress Head is norm cephalic and a traumatic. There is no evidence of CSF. Otorhea. Rhinorrhea. There is no Battle Sign or Raccoon's eyes. There does not appear to be any facial asymmetries.
NECK: supple with atrophy of the para spinous muscles secondary to disuse secondary to her symptoms and the collar. CHEST: Chest rises equally and appears to be moving good air.
EXTREMITIES: warm without significant edema
NEUROLOGIC: The patient is awake, alert and oriented to person. place. time and situation. Cooperative with exam and mostly appropriate. There is no apparent communication deficits. Cranial nerves 2-1 2 appear grossly intact. Cerebellar function appears intact without asymmetries to finger to nose. Coordination arid gait are unremarkable. Continues to have decreased pp.

Electronically signed by provider along the ulnar aspect of her L arm from the elbow extending to the 5th digit and medial aspect of the 4th digit. She has atrophy along the ulnar aspect of her

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hand and 5th digit and continues to have weakness as previously described. Lab/Test Results EMG/NCS as previously described. No new films to review. See previous notes for imaging studies.
ASSESSMENT:
723.1 Neck pain
354.2 Ulnar nerve neuropathy
PLAN: [redacted] has perhaps two severe but different problems. She has lifestyle limiting neck pain with radiographic concerns of adjacent segment disease at C7-T1 and perhaps C4-5 as well. She has exhausted all reasonable conservative measures. She underwent a collar trial for partial immobilization with unclear results. She will repeat this trial with a CTO prior to her next visit. She also has a life style limiting L ulnar neuropathy with evidence on EMG of a cubital syndrome. She is will return as scheduling permits to discuss surgical options along with re-assessment of a collar trial. We discussed the findings in great detail and she expressed a good level of understanding.

Various physicians, treating and non-treating, have written that the claimant suffered from various medical problems and that the claimant has significant work restrictions. While the finding that a person is "disabled" under the provisions of the Social Security Act is an issue reserved to the Commissioner6 (SSR 96-5p1), opinions from any medical source on issues reserved to the Commissioner must never be ignored. The adjudicator is required to evaluate all evidence in the case record that may have a bearing on the determination or decision of disability, including opinions from medical sources about issues reserved to the Commissioner. If the case record contains an opinion from a medical source on an issue reserved to the Commissioner, the adjudicator must evaluate all the evidence in the case record to determine the extent to which the opinion is supported by the record.

The fact that the claimant's treating physician, after extensive examinations and treatment, has formed such opinion as to the claimant's ability to perform sustained work activity was precluded strongly suggests a significantly limited residual functional capacity. Further, considering the claimant's diagnoses and multitude of prescribed medications tried, the undersigned finds that treating physician's opinion is well support and is not inconsistent with the other substantial evidence in the case record; thus, it is afforded controlling weight (20 CFR 404.1527(d)(2) and SSR 96-2p).

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6 Under 20 CFR 404.1527(e), some issues are not medical issues regarding the nature and severity of an individual's impairment(s) but are administrative findings that are dispositive of a case; i.e., that would direct the determination or decision of disability. The following are examples of such issues:

1. Whether an individual's impairment(s) meets or is equivalent in severity to the requirements of any impairment(s) in the listings;
2. What an individual's RFC is;
3. Whether an individual's RFC prevents him or her from doing past relevant work;
4. How the vocational factors of age, education, and work experience apply; and
5. Whether an individual is "disabled" under the Act.

The regulations provide that the final responsibility for deciding issues such as these is reserved to the Commissioner. 66

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In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairment(s) could reasonably be expected to produce the alleged symptoms, and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The State agency medical opinions are given little weight because other medical opinions are more consistent with the record as a whole and evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants. Furthermore, the State agency consultants did not adequately consider the claimant's subjective complaints or the combined effect of the claimant's impairments.

6. The claimant is unable to perform any past relevant work (20 CFR 404.1565).

The demands of the claimant's past relevant work exceed the residual functional capacity.

7. The claimant was an individual of advanced age on the established disability onset date (20 CFR 404.1563).

8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564).

9. The claimant's acquired job skills do not transfer to other occupations within the residual functional capacity defined above (20 CFR 404.1568).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c) and 404.1566).

In determining whether a successful adjustment to other work can be made, the undersigned must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11). When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decision-making unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If the claimant has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decision-making (SSR 85-15).

See Next Page

Even if the claimant had the residual functional capacity for the full range of sedentary work, considering the claimant's age, education, and work experience, a finding of "disabled" would be directed by rule 201.06.

11. The claimant has been under a disability, as defined in the Social Security Act, from June 1, 2005 through the date of this decision (20 CFR 404.1520(g)).

DECISION

Based on the application for a period of disability and disability insurance benefits filed on May 16, 2007, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act beginning on June 1, 2005.

Workers' Compensation offset may be applicable.

/s/ W Howard O'Bryan Jr.

W. Howard O'Bryan, Jr. (0453)
United States of America
Administrative Law Judge
Federal Administrative Judiciary

October 10, 2008
Date

Social Security Administration SSA-4268

EXPLANATION OF DETERMINATION

NAME OF CLAIMANT	W/E's NAME (IF CDB or DWB)	SSN	CLAIM TYPE
[redacted]		[redacted]	**DIB**

Medical Vocational Allowance: Claimant is a 55 yof alleging degenerative disc disease, anxiety and depression. CLaimant's AOD was 06-01-05. This claim is being allowed due to a combination of mental and physical allegations. Claimant's current mental residual capacity keeps her from returning to her past relevant work as an accountant which is highly skilled. Claimant's PRW was as an accountant, per DOT, Accountant, 160.162-018, which is considered as sedentary work with a SVP of 8. Claimant did this job from 1992 until 06-05. She reports no other employment. Claimant currently has the physical residual capacity to do light work. She can lift 10 lbs frequently and occasionally lift up to 20 lbs. She can stand and or walk about 6 hours in an 8 hour workday. She can sit about six hours in an 8 hour workday. She has no other physical restrictions. Due to claimant's depression, anxiety and personality disorder, she currently has the mental residual capacity to do simple and some complex instructions. Clmt has more than a 12th grade education, turned age 55 on 11[redacted]07, cannot do her past work due to mental restrictions and is limited to light work physically. Using vocational rule 202.06 as a guideline, clmt is found to be disabled as of turning age 55. Borderline Age criteria were considered, but as all her impairments were considered in the RFCs, there were no additional adversities to indicate an earlier onset could be found. Onset is established as of 11[redacted]2007, the day she turned 55.

MMS/jrs

[redacted]

SOCIAL SECURITY ADMINISTRATION

DISABILITY DETERMINATION AND TRANSMITTAL

1. DESTINATION: DDS [X] ODO [ ] DRS [ ] DOB [ ] INTPSC [ ]
2. DDS CODE: S39
3. FILING DATE: 05/16/2007
4. SSN: [redacted]
BIC (if CDB or DWB CLAIM): 00

5. NAME AND ADDRESS OF CLAIMANT (include ZIP Code): [redacted]
OKLAHOMA CITY OK 73112

6. WE'S NAME (if CDB or DWB CLAIM)

7. TYPE CLAIM (Title II): DIB [X] FZ [ ] DWB [ ] CDB-R [ ] CDB-D [ ] RD-R [ ] RD-D [ ] RD [ ] P-R [ ] P-D [ ] MQFE [ ]

8. TYPE CLAIM (Title XVI): DI [ ] DS [ ] DC [ ] BI [ ] BS [ ] BC [ ]

9. DATE OF BIRTH: [redacted]
10. PRIOR ACTION: PD [X] PT [ ]
11. REMARKS: [redacted]
Recon filed 07/30/2007
Recon received 01/15/2008

12. DISTRICT-BRANCH OFFICE ADDRESS (include ZIP Code)
SOCIAL SECURITY ADMINISTRATION
SHEPHERD MALL 2615 VILLA PROM
OKLAHOMA CITY, OK 73107
DO-BO CODE: 783

13. DO-BO REPRESENTATIVE
14. DATE
11A. [ ] Presumptive Disability
11B. [ ] Impairment

DETERMINATION PURSUANT TO THE SOCIAL SECURITY ACT, AS AMENDED

15. CLAIMANT DISABLED
A. [X] Disability Began 11[redacted]2007
B. [ ] Disability Ceased

16A. PRIMARY DIAGNOSIS: DISORDERS OF BACK DISCOGENIC & DEGENERATIVE
BODY SYS.: 01
CODE NO.: 7240

16B. SECONDARY DIAGNOSIS: AFFECTIVE MOOD DISORDERS
CODE NO.: 2960

17. DIARY TYPE: MRP
MO./YR.: 04/2015
REASON: 7

18. CASE OF BLINDNESS AS DEFINED IN SEC. 1614(a)(2)(216)(i)
A. [ ] Not Diseb. for Cash Bene. Purp.
B. [ ] Diseb for Cash Benefit Purp. Beg.

19. CLAIMANT NOT DISABLED
A. [ ] Through Date of Current Determination B. [ ] Through _____ C. [ ] Before Age 22 (CDB only)

20. VOCATIONAL BACKGROUND
OCC YRS.
EDYRS.: 16 COLL 4+
21. VR ACTION: A. SCIN [ ] B. SCOUT [X] C. Prev Rel [ ]

22. REG-BASIS CODE: C1
23. MED LIST NO.
24. MOB CODE
25. REVISED: DET [X]
Initial A. [ ] Recon B. [X] DHU C. [ ] ALJ Hearing D. [ ] Appeals Council E. [ ] U.S. District Court F. [ ]

26. LIST NO. A. B. C. D. E. F.

27. RATIONALE: [X] See Attached SSA-4268-U4/C4 [ ] Check if Vocational Rule Met. Cite Rule

28. A. [X] Period of Disability B. [ ] Disability Period C. [X] Estab Beg 09/15/2005 AND D. [ ] Continues E. [ ] Term _____

29. LTR/PAR NO.
30. DISABILITY EXAMINER-DDS: 01 MMS [redacted]
31. DATE: 05/21/2008
32. PHYSICIAN OR MEDICAL SPEC. SIGNATURE: [redacted], D.O., M.P.H 12.
33. DATE: 05/21/2008
32A. PHYSICIAN OR MEDICAL SPEC. NAME (Stamp, Print or Type): [redacted] DO MPH 12
32B. SPEC. CODE: 12

34. REMARKS: [redacted]
Claimant is capable per [redacted] report of 04-12-08. Change in onset

MULTIPLE IMPAIRMENTS CONSIDERED
34A. COMBINED MULTIPLE NONSEVERE-SEVERE
34B. COMBINED MULTIPLE NONSEVERE-NONSEVERE

35. BASIS CODE
36. REV. DET. CODES
37. SSA REPRESENTATIVE
SSA CODE
38. DATE

Form SSA-831-C3 (5/89) Oper JRS Date 05/22/2008 Case # 9006747 Dec AL [ ] DECISION [ ] CASE CONTROL

Social Security Administration SSA-4268

EXPLANATION OF DETERMINATION

NAME OF CLAIMANT	W/E's NAME (IF CDB or DWB)	SSN	CLAIM TYPE
[redacted]		[redacted]	**DIB**

54 yo DIB female with 16 years of education alleges DDD, depression and anxiety. The mental portion of the claim was found to be non-severe. The physical portion of the claim was given an RFC for light work with limited use of the left hand. The claimant's PRW includes a position as an accountant, DOT 160.162-018 8/S which the clmt describes as sedentary on her application and as medium on the Work History Report. Therefore, the claim is denied to PRW both as the claimant describes it and as it is generally performed in the national economy.

BNK/bnk

[redacted]

SOCIAL SECURITY ADMINISTRATION

DISABILITY DETERMINATION AND TRANSMITTAL

1. DESTINATION: DDS [X] ODO [ ] DRS [ ] DOB [ ] INTPSC [ ]
2. DDS CODE: 539
3. FILING DATE: 05/16/2007
4. SSN: [redacted]
BIC (if CDB or DWB CLAIM): 00

5. NAME AND ADDRESS OF CLAIMANT (include ZIP Code)
[redacted]
OKLAHOMA CITY, OK 73112

6. WE'S NAME (if CDB or DWB CLAIM)

7. TYPE CLAIM (Title II): DIB [X] FZ [ ] DWB [ ] CDB-R [ ] CDB-D [ ] RD-R [ ] RD-D [ ] RD [ ] P-R [ ] P-D [ ] MCFE [ ]

8. TYPE CLAIM (Title XVI): DI [ ] DS [ ] DC [ ] BI [ ] BS [ ] BC [ ]

9. DATE OF BIRTH: [redacted]
10. PRIOR ACTION: PD [ ] PT [ ]
11. REMARKS: [redacted]
DDS Received 06/15/2007

12. DISTRICT-BRANCH OFFICE ADDRESS (include ZIP Code)
SOCIAL SECURITY ADMINISTRATION
SHEPHERD MALL 2615 VILLA PROM
OKLAHOMA CITY, OK 73107
DO-BO CODE: 783

13. DO-BO REPRESENTATIVE
14. DATE
11A. [ ] Presumptive Disability _____
11B. [ ] Impairment _____

DETERMINATION PURSUANT TO THE SOCIAL SECURITY ACT, AS AMENDED

15. CLAIMANT DISABLED
A. [ ] Disability Began
B. [ ] Disability Ceased
17. DIARY TYPE | MO./YR. | REASON

16A. PRIMARY DIAGNOSIS: DISORDERS OF BACK DISCOGENIC & DEGENERATIVE
BODY SYS.: 01
CODE NO.: 7240

16B. SECONDARY DIAGNOSIS: AFFECTIVE MOOD DISORDERS
CODE NO.: 2960

18. CASE OF BLINDNESS AS DEFINED IN SEC. 1614(a)(2)(216)(i)
A. [ ] Not Disab. for Cash Bene. Purp
B [ ] Disab for Cash Benefit Purp. Beg.

19. CLAIMANT NOT DISABLED
A. [X] Through Date of Current Determination B. [ ] Through _____ C. [ ] Before Age 22 (CDB only)

20. VOCATIONAL BACKGROUND
OCC YRS.
ED YRS.: 16 COLL 4+
21. VR ACTION: SC IN A. [ ] SC OUT B. [X] Prev Rel C. [ ]

22. REG-BASIS CODE: H1
23. MED LIST NO.
24. MOB CODE
25. REVISED: DET [ ]
Initial A. [X] Recon B. [ ] DHU C. [ ] ALJ Hearing D. [ ] Appeals Council E. [ ] U.S. District Court F. [ ]

26. LIST NO. ▶ A. B. C. D. E. F.

27. RATIONALE: [X] See Attached SSA-4268-U4/C4 [ ] Check if Vocational Rule Met. Cite Rule ▶

28.
A. [ ] Period of Disability B. [ ] Disability Period C. [ ] Estab Beg _____ AND D. [ ] Continues E. [ ] Term _____

29. LTR/PAP NO.
30. DISABILITY EXAMINER-DDS: 08 BNK [redacted]
31. DATE: 07/23/2007
32. PHYSICIAN OR MEDICAL SPEC. SIGNATURE: [redacted] MD 19
33. DATE: 07/26/2007
32A. PHYSICIAN OR MEDICAL SPEC. NAME (Stamp, Print or Type): [redacted]
32B. SPEC. CODE: 19

34. REMARKS
MULTIPLE IMPAIRMENTS CONSIDERED
34A. COMBINED MULTIPLE NONSEVERE-SEVERE
34B. COMBINED MULTIPLE NONSEVERE-NONSEVERE

35. BASIS CODE
36. REV. DET. CODES
37. SSA REPRESENTATIVE
SSA CODE
38. DATE

Form SSA-831-C3 (5/89) Oper TJF Date 07/26/2007 Case # 8975329 Doc DE [ ] DECISION [ ] CASE CONTROL

ALJ Bench Decision Checksheet – Print Version

Claimant Name: [redacted] **SSN:** [redacted]

DIB Application Date: October 18, 2008 **Hearing Date:** April 26, 2010

SSI Application Date: October 18, 2008 **DWB Application Date:**

Date Last Insured: March 31, 2008 **Established Onset Date:** March 12, 2008

EOD is ☒ **AOD** ☐ **Amended AOD** ☐ **Current Appl. Date (SSI Only)** ☐ **Prior Appl. Date (SSI Only)**

☐ **Prior Application** ☐ **Reopened** ☐ **Not Reopened**

Prior Application Date(s): T2 **T16**

Reason for Reopening ☐ **Within one year** ☐ **Good cause** ☐ **Grounds for reopening at any time**

☒ **Work After Onset** ☐ **UWA** ☒ **Not SGA** ☐ **TWP**

Severe Impairment(s) (singly or in combination): Shattered ankle tibia fibula 3 plates 15 screws cyst, depression, anxiety, asthma, sinus problems, etc., etc., etc.,

☒ **Impairment(s) MEETS Listing #** 1.02A, 1.06, etc.,

☐ **Impairment(s) EQUALS Listing #**

☐ **Child is Functionally Equal to Listings**

Mrk	Extr		Mrk	Extr	
☐	☐	**1. Acquiring and Using Information**	☐	☐	**4. Moving about and Manipulating objects**
☐	☐	**2. Attending and Completing Tasks**	☐	☐	**5. Caring for Self**
☐	☐	**3. Interacting with Others**	☐	☐	**6. Health and Physical Well-being**

Mental Impairment Analysis (Part B)

Restriction of Activities of Daily Living	☐ None	☒ Mild	☐ Moderate	☐ Marked	☐ Extreme
Difficulties Maintaining Social Functioning	☐ None	☒ Mild	☐ Moderate	☐ Marked	☐ Extreme
Difficulties Maintaining Concentration-Pace	☐ None	☒ Mild	☐ Moderate	☐ Marked	☐ Extreme
Episodes of Decompensation	☐ None	☒ One or Two	☐ Three	☐ Four or More	

Mental Impairment Analysis (Part C)

Permanent Subcommittee on Investigations
EXHIBIT #13

[redacted]

☐ **12.02, 12.03, or 12.04 w/ 2 yrs med. history & more than minimal limitation &**

☐ **Residual disease process w/ marginal adjustment so that minimal changes cause decomp.**

☐ **Current Hx. 1+years in highly supportive living arrangement w/ continuing need for same**

☐ **Repeated episodes of decompensation, each of extended duration**

☐ **12.06 (inability to function independently outside area of home)**

Residual Functional Capacity:

☐ **Full range of** ☐ **Sedentary** ☐ **Light** ☐ **Medium**

☐ **Less than full range of** ☐ **Sedentary** ☐ **Light** ☐ **Medium (describe below)**

☐ **Nonexertional only (describe below)**

Function by Function: The credible evidence of record show the claimant is not functional at the sedentary level on a "regular and continuing" basis.

Rationale for Decision (Include Assessment of Credibility and Medical Opinions): See exhibits 13F through 17F.

☐ **No PRW** ☐ **PRW but is unable to perform**

PRW: ☐ **unskilled** ☐ **skilled/semiskilled but skills do not transfer to other occupations w/in RFC**

Claimant "disabled" based on:

☐ **Direct application of Medical-Vocational Rule #** _____

☐ **Framework of Rule #** _____ ☐ **based on VE testimony** ☐ **based on SSR#** _____

☐ **Section 204.00 Framework** _____ ☐ **based on VE testimony** ☐ **based on SSR#** _____

☐ **Recommend Representative Payee**

☒ **Medical reexamination in** 3 to 6 **Months**

See Next Page

[redacted]

months

☐ **Evidence of Workers Compensation Claim/Payment**

☒ **Fee Agreement Approved-Representative Name:** [redacted]

☐ **Fee Agreement Denied-Reason:**

ALJ: /s/ *W. Howard O'Bryan Jr.* **DATE:** April 27, 2010

W. Howard O'Bryan Jr. (0453)

SOCIAL SECURITY ADMINISTRATION

Refer To: [redacted]

Office of Disability Adjudication and Review
301 Nw 6th St
3rd Floor West
Oklahoma City, OK 73102

Date: April 27, 2010

[redacted]

Notice of Decision –Fully Favorable

I carefully reviewed the facts of your case and made a fully favorable decision on your application(s) for a period of disability, disability insurance benefits, and Supplemental Security Income filed on October 18, 2008 and October 18, 2008. I stated the basis for my decision at your hearing held on April 26, 2010. I adopt the findings of fact and reasons that I gave at the hearing. Please read this notice of decision.

I found you disabled as of March 12, 2008. Your impairment or combination of impairments is so severe that it meets the requirements of one of the impairments listed in the Listing of Impairments.

If you would like more information about my decision, I can provide you with a record of my oral decision. You must ask for this record in writing. You may mail or bring your request to any Social Security or hearing office. Please put the Social Security number shown above on your request.

Another office will process my decision and decide if you meet the non-disability requirements for Supplemental Security Income payments. That office may ask you for more information. If you do not hear anything within 60 days of the date of this notice, please contact your local office. The contact information for your local office is at the end of this notice.

If You Disagree With My Decision

If you disagree with my decision, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you or your representative must ask in writing that the Appeals Council review my decision. You may use our Request for Review form (HA-520) or write a letter. The form is available at www.socialsecurity.gov. Please put the Social Security number shown above on any appeal you file. If you need help, you may file in person at any Social Security or hearing office.

Please send your request to:

See Next Page

Appeals Council
Office of Disability Adjudication and Review
5107 Leesburg Pike
Falls Church, VA 22041-3255

Time Limit To File An Appeal

You must file your written appeal **within 60 days** of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did not get it within the 5-day period.

The Appeals Council will dismiss a late request unless you show you had a good reason for not filing it on time.

What Else You May Send Us

You or your representative may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence **with your appeal**. Sending your written statement and any new evidence with your appeal may help us review your case sooner.

How An Appeal Works

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

The Appeals Council may:

- Deny your appeal,
- Return your case to me or another administrative law judge for a new decision,
- Issue its own decision, or
- Dismiss your case.

The Appeals Council will send you a notice telling you what it decides to do. If the Appeals Council denies your appeal, my decision will become the final decision.

The Appeals Council May Review My Decision On Its Own

The Appeals Council may review my decision even if you do not appeal. If the Appeals Council reviews your case on its own, it will send you a notice within 60 days of the date of this notice.

When There Is No Appeals Council Review

If you do not appeal and the Appeals Council does not review my decision on its own, my

decision will become final. A final decision can be changed only under special circumstances. You will not have the right to Federal court review.

If You Have Any Questions

We invite you to visit our website located at www.socialsecurity.gov to find answers to general questions about social security. You may also call (800) 772-1213 with questions. If you are deaf or hard of hearing, please use our TTY number (800) 325-0778.

If you have any other questions, please call, write, or visit any Social Security office. Please have this notice and decision with you. The telephone number of the local office that serves your area is (866)331-2207. Its address is:

Social Security
2615 Villa Prom
Shepherd Mall
Oklahoma City, OK 73107-2468

/s/ W. Howard O'Bryan Jr.
W. Howard O'Bryan Jr. (0453)
Administrative Law Judge

April 27, 2010
Date

Enclosures:
Form HA-L15 (Fee Agreement Approval)

cc: [redacted]

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability, Disability Insurance Benefits, and Supplemental Security Income
(Wage Earner)	[redacted] (Social Security Number)

I approve the fee agreement between the claimant and her representative subject to the condition that the claim results in past-due benefits. My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise excepted. I neither approve nor disapprove any other aspect of the agreement.

YOU MAY REQUEST A REVIEW OF THIS ORDER AS INDICATED BELOW

Fee Agreement Approval: You may ask us to review the approval of the fee agreement. If so, write us within 15 days from the day you get this order. Tell us that you disagree with the approval of the agreement and give your reasons. Your representative also has 15 days to write us if he or she does not agree with the approval of the fee agreement. Send your request to this address:

Joan E Parks Saunders, Jurist Doctorate, Esquire
Regional Chief Administrative Law Judge
SSA ODAR Regional Ofc
Rm 460
1301 Young St
Dallas, TX 75202

Fee Agreement Amount: You may also ask for a review of the amount of the fee due to the representative under this approved fee agreement. If so, please write directly to me as the deciding Administrative Law Judge within 15 days of the day you are notified of the amount of the fee due to the representative. Your representative also has 15 days to write me if he/she does not agree with the fee amount under the approved agreement.

See Next Page

You should include the social security number(s) shown on this order on any papers that you send us.

/s/ W. Howard O'Bryan Jr.
W. Howard O'Bryan Jr. (0453)
Administrative Law Judge

April 27, 2010
Date

cc: [redacted]

See Next Page

SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY ADJUDICATION AND REVIEW

TRANSCRIPT

In the case of

[redacted]

(Claimant)

Claim for
Period of Disability
Disability Insurance Benefits
Supplemental Security Income

[redacted]

(Wage Earner) (Leave blank in Title XVI Cases or if name is same as above)

(Social Security Number)

Hearing Held

at

Oklahoma

(City, State)

on

April 26, 2010

(Month, Day, Year)

by

W. Howard O'Bryan, Jr.

(Administrative Law Judge)

APPEARANCES: [redacted] the Claimant
[redacted] Attorney for Claimant
[redacted] Vocational Expert

INDEX OF TRANSCRIPT

In the case of:		Account Number
[redacted]	Claimant	[redacted]

		Page
Testimony of [redacted]	commencing	6
Testimony of [redacted]	commencing	25

(The following is a transcript in the hearing held before W. Howard O'Bryan, Jr., Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, on April 26, 2010, at Oklahoma, in the case of [redacted], Social Security Number [redacted]. The Claimant appeared in person and was represented by [redacted] Attorney. Also present was [redacted] Vocational Expert.)

(The hearing commenced at 12:19 a.m. on April 26, 2010.)

ALJ: -- record. Are we on?

HA: We're on the record.

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

ALJ: All right, then. Since I've got [redacted] handy, I'm not going to go through the usual opening statement. I'll just simply say that we have your claims for a Period of Disability, Disability Insurance Benefits, as well as Supplemental Security Income. Now, the issues are the same issues that are on the notice, which Mr. Smith could quote from memory if I asked him to. He's done this, like I say, a few hundred times before. I'm not going to go through them, because it's already in the record, anyhow. The claimant is alleging an onset date of March 12, 2008. She is last insured on March 31, 2008. We don't have an insured status problem to deal with, so long as we're dealing for -- with an injury before that date, anyhow, so that's it. I do notice that our first day of insurance, this is kind of strange, was January 1, 2008, which means that she was only insured for a period of approximately three months in there. That's a little unusual to have something like that.

ATTY: That is unusual.

ALJ: Isn't that, though? Well, at any rate, we have documents here, and they're marked up through 17F, and if there are no

objections, I'll receive those into the evidence as Exhibits 1A through 17F. Is that all right with you, [redacted]

ATTY: Yes, Your Honor. I will note, though, that when I got her disc up, there was a 24 listed, 24F.

ALJ: Okay, let's find out what we've got here and see

ATTY: Well, and so --

ALJ: -- what it is.

ATTY: -- when I tried to --

ALJ: I'm showing here that we had some additional documents but that, for some reason, they didn't put a number on them. And let's see what we've got here now so I know what it is. I can put numbers on them, as far as that's concerned, I suppose.

ATTY: Well, I'm not too concerned about that, Your Honor. The, the only thing was, I wanted to tell you that when I tried to open up 24F, it said the shortcut had been -- was malfunctioning --

ALJ: Um-hum.

ATTY: -- and they asked me if I wanted to eliminate the shortcut. And I thought, well, I'll just open it up. Well, I eliminated the shortcut, and 24F went away.

ALJ: Well, I'll tell you --

ATTY: So, I don't know what was in it.

ALJ: -- I don't know what it is. Here's what I'm showing. I do show here something that's -- let's see. What -- after 17F, what I show is three documents there, but neither one of them are shown as Exhibits. One of them is from the DDS which is a medical evaluation case analysis, and another medical evaluation case analysis which

apparently -- let's just see what one of them says, just for the heck of it. Usually, what they say is, I agree with something, you know.

ATTY: Yeah.

ALJ: Yeah. I reviewed all the medical evidence in the file, and the assessment of 4/2/9 is affirmed as written. In other words, somebody just decided they -- they're saying they agreed with what's been done before. Then, we have another, which is a DDS disability worksheet, which is nothing more than just a sheet that indicates some of the activities that have gone on. It shows by the, by the date as to certain things there. Doesn't give us any information at all, if you want to be honest about the thing; at least, it doesn't give me anything that I could use in, in this case. The document that we have here which is probably the last one is the one that we received on June 5, 2009, which is -- covers a period from April 6, 2009 to June 1, 2009, and it concerns basically some insomnia, a follow-up on insomnia and anxiety problems from [redacted], MD.

ATTY: Um-hum.

ALJ: Now, the one before that is a medical assessment record from Clinic Orthopedic, et cetera, and it covers the period from November 3, 2008 to April 27, 2009, and we got --

ATTY: Um-hum.

ALJ: -- that in the Office on June 2, 2009.

ATTY: Um-hum.

ALJ: I see some items here, like a copy of evidence that's come from you where you're requesting that, and they don't give it an

Exhibit number, because it wasn't anything of significance other than --

ATTY: Right.

ALJ: -- the fact to be sure they sent something to you. And we've got some medical evidence of record from the [redacted] which we got in on May 14, 2009, and let's see what it says. It doesn't show it as having an Exhibit number, but it will be admitted in here if -- anyhow, as -- I'm not too sure why it doesn't have a number. Oh, I think I know why now. It's a bill. Yeah, that's part of it there. Oh, know, wait. There is some medical there. This has, has to do with a right bulbar wrist ganglion, and they excised that at the time. And it'll be included, of course, as an Exhibit here. They told about all the -- how they cut, cut it open and all that. I, I don't like to read those too well, because they're just bad, you know, kind of gory, you know. I just don't like -- I read them, anyhow. That's about what we've got here. We've got an awful lot of other things from [redacted] (PHONETIC), and [redacted] (PHONETIC), and [redacted] (PHONETIC), and [redacted] (PHONETIC), and --

ATTY: Um-hum.

ALJ: -- a whole bunch of things, [redacted] (PHONETIC), so -- but they'll all be admitted in the --

ATTY: Yes, Your Honor.

ALJ: -- into evidence. Got a goodly amount of evidence here, 1F up through 17F, and I'm sure that we've got everything there. So, if there's no objections, we'll receive those into the evidence as

Exhibits 1A through 17F. Is that all right?

ATTY: No objections, Your Honor.

ALJ: Okay, they're in the record, then.

(Exhibits 1A through 17F , previously identified, were received into evidence and made a part of the record thereof).

ALJ: Now, do you know of any reason right off the bat that we need to hold the record open?

ATTY: I don't believe so, but she was nudging me. I think maybe she --

ALJ: Well --

ATTY: -- may have had some late medical --

CLMT: I had more surgeries.

ALJ: Well, if they have some late, we can always -- I'll tell you what. Let's constitute it as ready, but we'll back up on that in case we get surprised here during the course --

ATTY: Okay.

ALJ: -- of the hearing, and, and if it is, why, I can always depend on you to --

ATTY: You bet.

ALJ: -- get it for me, and we'll get on here. But we'll get that done. Every once in a while, we have problems like that come up, and it's usually concerning -- well, usually, the attorney's kind of a little surprised, because they just find out that the claimant went to the hospital, or went to the doctor this morning, or yesterday, or something like that, you know, and we just don't have the documentation. Okay. Let's do that, then. All right. Let's go ahead, then, and take some testimony; but first, let me get down to

the point of explaining. Ma'am, this is not an adversarial proceeding. It is inquisitorial. So, I probably will not be asking very many questions, because I leave that up to Counsel to do that. He knows the case better than I would, because I'm -- you know, obviously, he's had a chance to work on it. I've got a whole lot of cases before me, and I haven't had that chance. So, he'll be asking most all of the questions, and I'll try to be a good audience and take some notes on it. Now, if I ask any, it'll probably be for clarification only. It's not cross-examination, is what I'm trying to say. What you can do to help, and, of course, Counsel's probably already explained this to you, but just be sure to answer the questions that he asks as truthfully as you can; and if you don't know the answer, just tell him you don't know, and he'll know what to do with that. He's an experienced man, and has been through this a few thousand times before. All right, let's take some testimony. Mr. Smith, would you go right ahead?

ATTY: Okay.

(The claimant, [redacted], having been first duly sworn, testified as follows:)

EXAMINATION OF CLAIMANT BY ATTORNEY:

Q Please state your name for the record.

A [redacted]

Q And, [redacted], how old are you?

A Thirty-three.

Q Could you state your birthday?

A [redacted]

Q Are you married?

A Yes.

Q Do you have children?

A Yes.

Q Do they live with you?

A Yes.

Q And how old are they?

A I -- my youngest is seven, the middle child is 12, and my oldest is 14.

Q Okay. What kind of educational background do you have?

A I have a high school diploma and 21 college credit hours.

Q I see. Do you have any vo-tech training?

A No.

Q Military training?

A No.

Q When was the last time that you worked?

A I worked for approximately 30 days in the end of October of 2009 to the end of November 2009.

Q So, you worked for 30 days. How, how many hours did you work per week, or per day, or per month, however you want to describe it?

A I worked no longer than a four-hour shift per day, and it was approximately eight to 10 hours, no more than 10 hours, a week.

Q I see. Well, prior to that little stint right there, when was the last time that you worked?

A 2006, in the summer of 2006.

Q And what kind of work did you do there?

A I worked in the hot food service part of [redacted]

Q I see, worked in the kitchen?

A Yes.

Q And were you a server, or a cashier, or what did you do there?

A There was no cashiering. I was cooking food, maintaining food, food temperatures, putting stuff out on the counters --

Q And how long did you --

A -- customer service.

Q How long did you work there?

A Approximately a month.

Q A month. When was the last time you worked somewhere for longer than a month?

A 2000 to 2001, probably.

Q I see. And how long did you work at that job?

A Approximately one year.

Q And what did you do there?

A I was a [redacted]

Q Prior to that?

A Prior to that, I worked --

Q Do you recall?

A About six months at [redacted] as a manager-in-training.

Q Did you do scheduling for other employees, and that kind of thing?

A Yes, hired employees, scheduling, and personal training, cleaning of tanning beds.

Q I see. And what year was that?

A 1999.

Q Um-hum. And prior to that? Did, did you have employment prior to that?

A Yes.

Q Where did you work?

A I worked at [redacted].

Q What did you do at [redacted]

A I was a [redacted] and, and then, was promoted to [redacted]

Q How long did you do that job?

A Approximately one year.

Q Did you have a job prior to [redacted]

A Yes. I worked at [redacted] --

Q Uh-huh.

A -- for approximately six months.

Q I see. And were those job requirements what we -- what, what one would anticipate from a [redacted]?

A Yes.

Q And prior to that, where did you work?

A Prior to that, I worked fast food at [redacted] and [redacted]

Q And, and when was that job?

A That started when I turned 16 to 18.

Q I see, okay. That pretty well describes your work history?

A Yes.

Q Were you working when you had your accident?

A No.

Q You weren't working? When, when did you have your accident? Why don't we talk about that for a minute.

A March 12, 2008.

Q And what happened to you?

A I was putting some boxes up in the attic, and some Valentine's decorations, and was getting boxes down for Easter, and misstepped, and stepped into sheet rock, and landed on my right foot, and then hit my head.

Q And what kind of injuries did you sustain?

A Pilon fracture to the tibia fibula, and a shattered ankle.

Q And did that require surgery?

A Yes, more than one.

Q Um-hum.

ALJ: I note here that she did shatter her ankle and tibula fibula. She's got three plates in there, and 15 screws, and she had some cyst problems since then. The reason I've gotten familiar with that, I just got through breaking my leg, and I had the --

ATTY: Oh, my Lord.

ALJ: -- my -- only mine wasn't as bad as hers. I had that they had to redo the joint there on mine, and they put five screws with a plate in the fibula side; and on the tibia side, why, they had to put, put two long screws in the thing to rebuild that joint, you know. In fact, that's the reason I'm using this right now, a little -- I've been very fortunate in that I, I was only off, oh, about, oh, less than six weeks on the thing, and I've -- it's worked out very well for

me. But she, she had a real bad job. She's got three plates, and 15 screws, and a whole bunch of stuff, and has had some cysts, even, after that.

CLMT: No --

ALJ: Go right ahead, though.

ATTY: Okay.

CLMT: -- I don't have those. They took those out --

ATTY: Right.

CLMT: -- (INAUDIBLE).

BY ATTORNEY:

Q Well, we'll let you tell, tell us about that, but -- so, you broke your ankle, you had surgery, and plates were applied?

A Initially, I had an external fixator.

Q Right.

A And two weeks later, they went in and put in three plates and 15 screws.

Q In your ankle, in the joint?

A In the ankle joint and the leg, the leg bones, tibia fibula.

Q Uh-huh. And you've since had other surgeries, have you not?

A Correct.

Q How many surgeries have you had altogether?

A I've had eight -- just on my leg?

Q Yeah.

A On my right leg, I've had two surgeries.

Q Two surgeries?

A Three surgeries.

Q And the last one was --

A Sorry.

Q -- to remove the hardware?

A The last one was to remove the initial three plates and 15 screws, and fuse -- I don't know which is the bigger bone of the leg, the tibia or fibula. But they fused the bigger of the leg bone to my top of my foot bone, because I have no ankle or cartilage left. And the other bone is just left free-falling from my knee, and I now have two plates and 16 screws.

Q Is -- the bone that's free-falling, is it attached to anything?

A The top of it's attached to my knee -- or --

Q But the bottom is not attached?

A No, it's not.

Q And when you say, fixated, so, your ankle's been fused?

A Correct.

Q So, your joint doesn't work at all? Well, I guess it works --

A I don't --

Q -- well enough for you to walk, but not in the normal way one would --

A I don't have range of motion left or right. I have some range of motion as far as flexion this way. However, I have to be very careful on it, and they forewarned me that I was really lucky to have the top of the foot bone left, that there could be -- if I wear that down and have to have it fused to the bottom of the foot bone, I will have no range of motion in it at all.

Q I see. You mentioned you had other surgeries. What -- are they related to this?

A There are other injuries --

Q Right.

A -- not on the -- I was in a cast at the time with some of my other surgeries.

Q I see.

A And the cyst, the cyst is related to this.

Q The cyst in the wrist, or --

A Correct, the right wrist.

Q How about the -- your left knee? What happened there?

A My left knee, I'd had the last -- I'd had the fusion surgery in December 2009; and in February -- or, I mean, the fusion surgery in December of 2008. And in February of 2009, I had a mishap in the bathroom, and I was still in a cast on the right ankle, and my left ACL was torn, and the MCL was very strained.

Q So, you had surgery for that, as well?

A Two, two surgeries.

Q Two surgeries on your ACL?

A Um-hum.

Q Did they get that back to where it functions normally?

A No.

Q I see. What kind of problems do you have with your ACL on your left knee?

A I have swelling, limited range of motion, a lot of pain, popping, I can't climb or bend the same as before, I have --

Q With your left knee?

A Yes. I have metal that pops from underneath the skin. I have swelling and fluid retention.

Q They attached your ACL back with some sort of metal device?

A Yes. It was a new device. And then, it required a second surgery, because the metal was actually starting to break through the skin, so they had to clip part of the metal off.

Q I see. Do you have pain associated with your ankle?

A Yes.

Q Is it, is it constant?

A It's every day, yes.

Q Do you have good days and bad days?

A Yes.

Q How many good days do you think you have in a week or a month, however you'd like to describe it?

A On a good week, three days.

Q And so, the rest are bad? Is that what I'm hearing?

A Yes.

Q If you had to rate your pain level, on a good day, how would you rate it?

A A four.

Q If one being the least, 10 being the most?

A A four.

Q And how about on a bad day?

A Seven and a half, eight.

Q On those bad days, is the pain distracting?

A Yes.

Q Do you -- would you describe it as debilitating?

A Yes.

Q Can you like read a newspaper on those days, and kind of report back to us what it says?

A No.

Q What kind of activity level do you have on a good day?

A My -- low.

Q Low?

A Um-hum.

Q Do you do housework and that kind of stuff?

A I load the washing machine, and I have a 4-pound dog. I feet and water her.

Q Okay. How far can you walk? You know, on a good day, when your activity level's a little better, how far can you walk?

A About four houses down from my house.

Q Is that like -- could you put that in terms of blocks, or yards, or feet?

A Blocks, it would be one-fourth of a block.

Q About a fourth of a block? Do you have any kind of symptomology as a result of activity? Oh, does your pain level get worse with activity?

A Yes.

Q After activity, what do you do for kind of relief?

A I have to lay on my back and elevate my leg above my heart. And I take medication.

Q Pain medication?

A Yes, sir.

Q When you have -- when you are active, do you get any swelling with your ankle?

A My ankle and my foot swell.

Q Does it swell a little bit or a lot? How could you describe --

A No.

Q -- that for us?

A It swells, it swells grossly, to the point to where I cannot put on a regular shoe.

Q Is it painful when it swells?

A Yes.

Q And for relief, you -- what do you do?

A I have to lay on my back and have my foot elevated.

Q For how long?

A Approximately 30 minutes to two hours.

Q Do you lay in bed, or on a sofa, or a recliner? How do you do that?

A Either the couch or the bed. Typically, the bed now.

Q Um-hum. How about your left knee? Does it, does it give you trouble, as well, with activity?

A Yes.

Q Does it swell?

A Yes.

Q Does it become stiff and immobile?

A Yes.

Q Is it painful?

A Yes.

Q If we kind of go through the same scenario, scenario we did with your ankle, do you have good days and bad days?

A Yes.

Q How many good days do you think you have in a week's time?

A With my knee?

Q Um-hum.

A Probably four good days.

Q Okay. Pain level, one to 10, one being the least, 10 being the most?

A On a good day?

Q Um-hum.

A On a good day, three.

Q And on a bad day?

A Six.

Q As to the affected area of your ankle, do you ever have any - what kind of sensations do you have? Do you have normal feeling in your ankle?

A No.

Q What, what kind of sensations do you have there?

A Parts of my ankle and, and the leg are numb on the outside part. The inner ankle is very sensitive to touch, and has a damaged nerve. If it comes in contact with anything, it sends an electrical shock. I have a radiating, throbbing pain. Also, it becomes numb,

especially when it swells and the circulations seems to be poor, it's numb, tingles like it's asleep.

Q Is that every day?

A Yes. That happens every day.

Q Do you ever have cramping associated with this?

A Yes, something like Charlie horses, especially in my foot. And I get muscle twitches in my leg. And also, I have a loss of feeling in my toes as far as flexing them up.

Q How long does that last, usually, the cramping and so forth?

A It could last for 45 minutes to three hours. Sometimes, it lasts all night long.

Q And that's pretty well daily?

A Yes, every day.

Q How long do you think you can sit before you become uncomfortable or your ankle begins to swell or bother you?

A Probably about 30 minutes.

Q And if it does swell, what do you have to do?

A If --

Q If your ankle swells up from sitting?

A I have to elevate it --

Q Do you get any --

A -- above my heart.

Q Do you get any relief from getting up and moving around?

A No.

Q How, how long can you stand before you become uncomfortable?

A Fifteen to 20 minutes.

Q Um-hum. How about bending? Can you, can you bend over and pick things up off the floor?

A No. Rarely.

Q Okay.

A I might be able to bend over and pick up a piece of paper, but not every day.

Q Repeatedly?

A Rarely.

Q If you had to do it repeatedly?

A No, and I typically have to hold onto the wall.

Q Why is that?

A Because my gait and my balance are off, and I don't have the same ability to flex and bend in my knee or my ankle.

Q Stooping?

A No.

Q How about lifting? Can you pick things up off the floor, like 5 pounds, a 5-pound sack of flour?

A I don't know, off the floor. Maybe from a table about this height.

Q Uh-huh.

A I haven't tried to pick up 5 pounds from the floor.

Q Do you, do you try to avoid lifting?

A Yes.

Q Keeping things out of your hands?

A Yes. The doctor's told me that I should only lift 5 to, at the most, 15 pounds, and I shouldn't be bending over to lift anything.

Q I see. Climbing stairs probably eliminated?

A Correct.

Q Ladders out?

A Correct.

Q You mentioned you had a cyst in your right hand. Are you right-handed?

A Yes.

Q Has that affected your ability to manipulate, fine motor control, and so forth?

A Yes.

Q Can you handle a pen?

A Yes, but I can't write for long periods of time, and there are some days when my hand's so cramped and closed that I wouldn't be able to write, type, open jars.

Q Okay. Keyboard?

A Keyboard.

Q Okay.

A Ten key.

Q Well, you've had to put up with quite a bit through all of this, all these surgeries and your limitations. How has that affected you mentally?

A I deal with a lot of depression, and anxiety, and guilt.

Q Yeah? Do you ever have periods of depression where you kind of sit at home, and shut the windows, and refuse to talk to people?

A I don't -- yes.

Q How often does that occur?

A Probably five days out of the week.

Q Um-hum. Have you ever had any crying episodes?

A Yes, I have crying episodes daily.

Q Daily?

A Yes.

Q How long do they last?

A Thirty minutes to two hours.

Q Are you taking any medication for that?

A For the anxiety, I take Xanax.

Q I see.

A And I --

Q What kinds of things cause you to be anxious?

A Being out in public places, being in crowded places, being in a vehicle that I'm not driving, being -- anywhere that I go, I'm constantly worried about, what if there was a fire? You know, how would I get out? And --

Q What about a crowd makes you --

A A crowd.

Q -- anxious? What are you afraid of?

A Being trampled over, or not being able to protect -- my oldest child is disabled, cerebral palsy. Being -- especially if he and I are out, and -- or just, something happened that --

Q I see. Are you afraid people will knock you over, bump into you?

A Yes. Yes, I've been bumped into, and fallen.

Q You've said you're nervous when you're in a car. What -- are

you -- the same thing, or --

A I'm afraid of being in a wreck. I'm --

Q So -- but --

A -- afraid of not being able to -- I don't like not being in control of it. I get shortness of breath. I've had crying episodes in vehicles, panic attacks.

Q What do you do when these things come over you?

A I break out in hives, and cry, and --

Q Do you remove yourself?

A -- try to -- yes. I try to go back to my house, to my bedroom, specifically, as soon as possible.

Q You said that you can drive. So, you don't have any restrictions on driving?

A Yes, I'm not supposed to drive for long periods of time.

Q How far do you think you drive normally when you get in a car?

A The most I drive, typically, is four blocks.

Q Can you use your foot to push on the pedal?

A On the gas pedal. I use my left foot for the brake.

Q Can you feel with your right foot?

A Not with the toes. With the heel more.

Q I see. Well, I asked you about housework earlier. Who does the housework at your house?

A Mainly, my husband and my middle child, [redacted] (PHONETIC).

Q So, you have lots of help around the house?

A Um-hum, yes, um-hum.

Q How about meals?

A All three of my children are a full day of school, so they have breakfast at school, lunch at school; and my husband is off early in the afternoon, so he typically cooks, or we have sandwiches, or --

Q Uh-huh.

A -- out to eat. And after surgeries, I was on the Meals on Wheels program to where somebody would come by and bring me food, the church.

Q Very good. How about socially? Do you get out much?

A No.

Q You mentioned medications earlier. What kind of medications are you on?

A Prescription medications, Lortab, Xanax, and Ambien.

Q And how often do you take them? Do you take them every day?

A Yes. And Albuterol inhaler.

Q Do you have any side effects associated with your pain medication or your anxiety medication?

A The pain medication makes me nauseous, itchy, dizzy, so I typically, after I take that, I lay down. I get real hot.

Q Um-hum.

A And I also become irritable, so I typically lay down and go to sleep when I take that. And the anxiety medication helps to regulate the anxiety somewhat, but it also affects -- gives you kind of a numbness and nonability to be out driving, or --

Q Um-hum.

A -- operating machinery, or anything.

Q So --

ALJ: Try and speak up a little louder, would you, ma'am?

CLMT: I'm sorry.

ALJ: That's all right.

BY ATTORNEY:

Q Do you have any kind of walking apparatus or -- I know you've -- I've seen that you've had different things throughout your process of healing.

A Um-hum.

Q What kinds of things have you had?

A I've had a wheelchair, crutches, a walker with wheels and a walker without wheels, a cane, and I have a -- not an electric scooter, but it's a scooter that I can put my right leg up on, and then, you pedal with your left leg.

Q And is that what you came here today with?

A Yes.

Q I see.

A And I still have all the other -- the doctor's instructed me to keep everything else. When it rains and snows, if I have to get out, I use the walker.

Q I see. Do you drink alcohol or take illicit drugs?

A I have an occasional drink of wine --

Q Um-hum.

A -- glass of wine. I don't use illicit drugs.

ATTY: Okay. That's about all the questions I have at this time, Your Honor.

ALJ: Okay.

EXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE:

Q Ma'am, I -- you have three children, and how do you handle taking care of them?

A My husband works from 5:30 in the morning until 2:30 in the afternoon, so about the time that they're getting out of school, he's off work, and their school is all within four blocks, so take, I take them to school, and we share picking -- the responsibility of picking them up. My father and his wife live two doors away from me. My mom lives two blocks away from me. So, I have my family, really, there to help.

ALJ: Okay. Let's see if we can't -- I, I just needed to bring that up and just check into it. Let's, let's talk a little bit with our vocational expert.

(The vocational expert, [redacted] having been first duly sworn, testified as follows:)

EXAMINATION OF VOCATIONAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q Ma'am, your name is?

A [redacted] PHONETIC).

Q And, [redacted] I think you've probably been in hearings with [redacted] before, have you not?

A I believe so, Your Honor.

ALJ: All right. [redacted], would you have any problem with her --

ATTY: No objections, Your Honor.

ALJ: -- testimony?

ATTY: No objections.

ALJ: I didn't think you would, I'm sure. Ms. Bottrough is very

well-recognized and does a good job. I know that. And most of the attorneys tell me that, anyhow. All right.

BY ADMINISTRATIVE LAW JUDGE:

Q Ma'am, you've looked at the records already. I know that, and I'm not going to go through all that usual kind of thing. Just tell us, from the records, what you find that she -- the kind of work she's done, say, in the past 15 years, and give us some idea about what that work entails.

A The jobs that, in my opinion, meet SGA, Your Honor, would be [redacted] in a bank, which is light skilled work; [redacted], also light skilled work; [redacted] sedentary semiskilled work; and [redacted] light skilled work.

Q Um-hum. What kind of jobs are those from the standpoint of exertional requirements, ma'am?

A The light jobs would require being up on your feet the majority of the workday, with lifting requirement being a maximum of 20 pounds. The sedentary jobs are done primarily in a seated position, with a maximum lifting requirement of 10 pounds.

Q All right, then, ma'am. Let's see. Hard to kind of ask questions that I have in mind, here. Let's assume, ma'am, for the sake of a hypothetical, here, that I found that -- a second, here. Let's assume that I was to find that she would, as a result of her physical injuries, would be able to lift, say, 10 pounds occasionally, but less than 10 pounds on any kind of a frequent basis; and let's just say that in an eight-hour workday with normal work breaks, now, that she would only be able to, to walk and/or stand approximately two

hours. On the other hands, let's assume that in an eight-hour workday, she'd be able to do about six hours in an eight-hour workday with sit -- reference to sitting. Now, with those particular restrictions right there, would there be any work that she's done in the past that she could do?

A The occupation of telemarketer.

Q Um-hum.

A And in -- which is a sedentary semiskilled job. And in Oklahoma, there's 5,100 of those kind of jobs; and 296,000 in the nation.

Q All right. And now, ma'am, let's also make the assumption that we have an individual that would -- just a second, now. I'm going to pull something up here that I can kind of depend on. Well, ma'am, let me ask this. In the jobs that you just mentioned, would these be jobs that -- well, you would have to be able to deal with the public, assume, in those jobs; or would you?

A That's correct, you would.

ALJ: Okay. Hm. Well, to be perfectly honest about it, I'm having a little trouble finding the kind of -- let's let [redacted] ask you some questions. He's real good at this sort of thing. So, go right ahead and ask some questions, [redacted]

EXAMINATION OF VOCATIONAL EXPERT BY ATTORNEY:

Q In the first hypothetical that was described, if an individual suffered from anxiety, and on occasion, would feel anxious, regardless of rational fear or not, and had to remove herself from that situation, meaning she'd have to leave her station of employment, and

that occurred once a week, would that eliminate any of those jobs?

A How long would she have to remove herself from the station of work?

Q Oh, let's say, three hours.

A It would preclude competitive employment.

Q Anywhere?

A Anywhere.

Q If we take out the anxiety part of the question that I just asked you, and I said, well, if we had an individual who was capable of doing the kind of work that you said; however, if she sits for longer than about 45 minutes, she's had an ankle injury, and that ankle begins to swell and become uncomfortable, and her only method of relief would be -- well, she has two methods of relief: one, taking pain medicine, which might make her a little foggy; or she could get in a reclining position where her foot would have to be higher than her heart for a period of, say, 30 minutes, three times a day. Would that eliminate any of the jobs that you've described?

A It would eliminate all of them, and preclude competitive employment.

ATTY: Okay. I, I, I think that would cover it, Your Honor.

ALJ: All right, then. Let me take a real good look at it and see what we've got here, and I'll, I'll look it all over and try to take it under advisement and try to get to it just as quick as I can, which should be pretty close -- pretty, pretty fast. I'm, I'm, I'm not real far behind, so I can handle it, I think, by looking at it, and I'll study it over. And it's good to see you again. Do you have

any more cases with me today?

ATTY: Not, not today, Your Honor, but I did have one more question that --

ALJ: Yeah. Go right ahead. Ask it.

ATTY: -- related to that she --

ALJ: Sure.

ATTY: -- she's asked me earlier about her records.

RE-EXAMINATION OF CLAIMANT BY ATTORNEY:

Q Are, are we missing some more recent records?

A Yes.

ALJ: Okay.

BY ATTORNEY:

Q Okay, and is it related to your ankle or your knee?

A Yes. I had a --

Q Okay.

A -- knee surgery that's not included, and I had a following surgery as a result of an injury from the last knee surgery being (INAUDIBLE).

ATTY: Okay.

RE-EXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE:

Q When was that surgery on --

A The last knee surgery was -- I don't know the exact date.

Q That's all right, ma'am. Just give me a --

A June of 2009.

Q Okay.

A And during that knee surgery, they did -- I think it's called

an endotracheal anesthesia, where they put a tube, and they put a hole in my throat.

Q Um-hum.

A And I had an upper respiratory infection, so everything drained in my ear, and as a result of the hole put in my throat from the last knee surgery, they had to put a tube in my ear August of 2009.

Q All right. Now, what happened after that? Did you have any other surgeries or anything?

A Yes. I was having some, I had some weight gain, and hair growth, and not a consistent menstrual cycle; so, they ran some tests, and I had a nabothian cyst found in my cervix/uterus. And so, in December of 2009, they -- I had another surgery that burned out my uterine lining and removed the cyst.

ALJ: All right, then. Let me say this: I'm going to go ahead and make an allowance in the case, and I will make a recommendation, of course, that you do follow it closely within the next, say, six months to a year, because she's a very young woman, and there's no question in my mind she'll be -- probably, if all goes well, she'll be all right. Time will tell. But I'm doing this on the basis, really and truly, of the fact that, well, based primarily on the fact that she just had so many different surgeries that had come about since this injury that she's had, it just seems like she's always been in the hospital and all that. Now, it's true that some of the things have developed here since she was last insured. The ganglion cyst, for instance, that she had on the wrist, and other things. But

generally speaking, I think what she has here is a problem that -- where she's had, had to have the metal removed in one instance, some of the metal removed in one instance, and all that. So, I'm going to put her, probably, in here, as meeting a listing with reference to the lower extremity, and also, below the sedentary level of function. And then, what I'll do is, I'll recommend that they reconsider her in the not too distant future, because I have a great deal of faith in the fact that the kind of things that she's got are things that are not permanently a problem, as a general rule. They're more -- well, they're a hindrance, there's no question about that, and she won't ever get over everything entirely, but she'll get to the point where she can go -- now, of course, a question came up, well, why couldn't she go back to being some of the things she's done in the past, like being a [redacted] and a, and a, a [redacted] Well, the main reason there is that she's had so much trouble with the swelling, and having to keep her leg up, and, and all that, and I do know she's had some, some problems that are mental in nature. She's showing on her records here that she's had some problems with -- well, they mention mood as one of the main things, and some anxiety that's associated with that. They're indicating here the somatoform type of activity, and then, some personality problems that have gone into it, also. And that's all covered under the, the medical opinions of the Ph.D. and some of the other doctors in here. I notice, too, that she has had a good deal of trouble with pain, and has had to go through the pain management people, and I was particularly impressed, incidentally, with the report that was given by Dr. [illegible] and although

Dr. , I don't see him as a treating physician, I do note in here that he gave a pretty good summary of the problems that she has had, indicating that back on February 19, 2009, that she was status post her fracture to the right ankle, and status post an ACL tear in the left knee, so we've got two of the lower extremities that are involved. I note here that when she was 31 years old, she fell through an attic onto the floor, that was on March 13, 2008, and was found to have a pilon fracture of the right tibia and right fibula with a shortening and slight displacement, and she's had numerous surgical procedures since then. And I note here that she, in March the 25th, why -- of that year, why, she -- let's see. March 25, 2009, she had the external fixator removed, and an ORIF of the fracture with plate and screws. It indicates there the fusion actually took place on December the 11th, 2008, I guess. And then, of course, she fell again on February the 8th, and apparently, that was 2009, and came up with even more. Now, [redacted] has been the one to take care of it. And so, I'm going to go along with the concept that, in view of her testimony, that she's still using a walker, and that she's having chronic pain, stiffness, and there is some evidence of some decreased vision, some sinus allergies, some panic attacks, some asthma, some peptic ulcer disease, various joint pains, bruising is easy, et cetera. I'm showing her as separated with three children here, but that isn't true, is it, ma'am?

CLMT: No. At the -- we had separated, but not anymore.

ALJ: Not anymore. So, your husband is at home now, and is able to take care of the children after 2 o'clock in the afternoon.

CLMT: Correct.

ALJ: And that's helpful. All right, then. I think we've got enough here for that. The thing that I've noted in here -- and the reason that I let it go on as much as I did, is, I felt like this might be a closed period. But apparently, it isn't. But it's -- I think, probably, based on what I'm seeing here, the doctors seem to be somewhat optimistic about her possibilities, so -- and I am glad to see that, and I'm glad she's -- I'm sure she is, too. She'll have some problems, of course, I'm sure, in the future. There's no question about that. But let's hope she gets a lot better. Okay, if there's nothing further, then -- is there anything further, Mr. Smith?

ATTY: No, Your Honor.

ALJ: Okay. We'll go ahead and make the allowance on those reasons I just set forth. The hearing stands as closed.

ATTY: Thank you, Your Honor.

ALJ: Incidentally --

(The hearing was closed at 1:09 p.m. on April 26, 2010.)

C E R T I F I C A T I O N

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded at the hearing held in the case of [redacted] before Administrative Law Judge W. Howard O'Bryan, Jr.

Lisa D. Sevarino, Transcriber
Free State Reporting, Inc.

Caroline Musterman, Proofreader
Free State Reporting, Inc.

SOCIAL SECURITY ADMINISTRATION

Refer To: [redacted]

Office of Disability Adjudication and Review
301 Nw 6th St
3rd Floor West
Oklahoma City, OK 73102

Date: APR 1 7 2008

[redacted]

NOTICE OF DECISION – FULLY FAVORABLE

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

This Decision is *Fully Favorable To You*

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

The Appeals Council May Review The Decision On Its Own

The Appeals Council may decide to review my decision even though you do not ask it to do so. To do that, the Council must mail you a notice about its review within 60 days from the date shown above. Review at the Council's own motion could make the decision less favorable or unfavorable to you.

If You Disagree With The Decision

If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeals Council.

How to File an Appeal

To file an appeal you or your representative must request that the Appeals Council review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the **Appeals Council, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22041-3255**. Please put the Social Security number shown above on any appeal you file.

Permanent Subcommittee on Investigations
EXHIBIT #14

Time to File an Appeal

To file an appeal, you must file your request for review **within 60 days** from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time to Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider **with** your request for review.

How an Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J).

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The Council may review your case for any reason. It **will** review your case if one of the reasons for review listed in our regulation exists. Section 404.970 of the regulation lists these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

If No Appeal and No Appeals Council Review

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

See Next Page

[redacted]

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (405)605-3000. Its address is Social Security, 2615 Villa Prom, Shepherd Mall, Oklahoma City, OK 73107.

W. Howard O'Bryan, Jr. (0453)
United States of America
Administrative Law Judge
Federal Administrative Judiciary

cc: [redacted]

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability and Disability Insurance Benefits
(Wage Earner)	[redacted] (Social Security Number)

I approve the fee agreement between the claimant and his representative subject to the condition that the claim results in past-due benefits. My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise excepted. I neither approve nor disapprove any other aspect of the agreement.

YOU MAY REQUEST A REVIEW OF THIS ORDER AS INDICATED BELOW

Fee Agreement Approval: You may ask us to review the approval of the fee agreement. If so, write us within 15 days from the day you get this order. Tell us that you disagree with the approval of the agreement and give your reasons. Your representative also has 15 days to write us if he or she does not agree with the approval of the fee agreement. Send your request to this address:

Joan E Parks Saunders, J/D
Regional Chief Administrative Law Judge
SSA ODAR Regional Ofc
[redacted]
Dallas, TX 75202

Fee Agreement Amount: You may also ask for a review of the amount of the fee due to the representative under this approved fee agreement. If so, please write directly to me as the deciding Administrative Law Judge within 15 days of the day you are notified of the amount of the fee due to the representative. Your representative also has 15 days to write me if he/she does not agree with the fee amount under the approved agreement.

You should include the social security number(s) shown on this order on any papers that you send us.

W. Howard O'Bryan, Jr. (0453)
Administrative Law Judge

APR 17 2008
Date

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability and Disability Insurance Benefits
(Wage Earner)	[redacted] (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before the undersigned on a request for hearing dated March 27, 2008. The evidence of record supports ***a fully favorable decision; therefore no hearing has been held*** (20 CFR 404.948(a)). The claimant is represented by [redacted]

The claimant is alleging disability since June 15, 2006.

ISSUES

The issue is whether the claimant is disabled under sections 216(i) and 223(d) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

There is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2011. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful review of the entire record, the undersigned finds that the claimant has been disabled from June 15, 2006 through the date of this decision. The undersigned also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509), the claimant is disabled. If it does not, the analysis proceeds to the next step.

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Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e) and 404.1545; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f)). If the claimant has the residual functional capacity to do his past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g)), the undersigned must determine whether the claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he is not disabled. If the claimant is not able to do other work and meets the duration requirement, he is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g) and 404.1560(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. The claimant's date last insured is December 31, 2011.

2. The claimant has not engaged in substantial gainful activity since June 15, 2006, the alleged onset date (20 CFR 404.1520(b) and 404.1571 *et seq.*).

Vocational Information

javascript:hideShowDataViewSection(%22JobsWorkedintheLast15years%22)

Jobs Worked in the Last 15 years

Job Title	Type of Business	From	To
1. Firefighter/Inspector	Government	May 1986	May 2006

javascript:hideShowDataViewSection(%22WorkDevelopment-InitialLevel%22)

Work Development - Initial Level

Claim Type: DIB

820/821 Pending: No

javascript:hideShowDataViewSection(%22Ticket/ProgramInformation-InitialLevel%22)

Ticket/Program Information - Initial Level

Participate in Ticket program or another program? No

javascript:hideShowDataViewSection(%22Ticket/ProgramInformation-ReconsiderationLevel%22)

Ticket/Program Information - Reconsideration Level

Participate in Ticket program or another program? No

javascript:hideShowDataViewSection(%22Ticket/ProgramInformation-HearingLevel%22)

Ticket/Program Information - Hearing Level

Participate in Ticket program or another program? No

javascript:hideShowDataViewSection(%22AdditionalRehabilitationInformation%22)

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Additional Rehabilitation Information

Working now? No

Stopped working because: Because of other reasons (not my condition) The career that I had, required an annual physical. In March of 2006 I did not pass the required physical. The particular Dr. that evaluated me concluded that, in his opinion, I would not be able to continue my present duties because of the heart bypass in 1997. I had the opportunity to voluntarily retire in May of 2006, so that's what I did, with the intention of retiring/changing careers. On June 15, 2006 I was diagnosed as needing a double bypass on my heart and arterial bypass in both legs. I don't believe that I am now able to work anymore.

Stopped working when: 05/31/2006

Alleged Impairments: Coronary artery disease Blocked cardiac arteries, Blocked leg arteries, Back injury, Hypothyroidism, Painful walking, Edema in the lower extremities, Hypertension, Anxiety My numerous medical conditions cause combined symptoms. My back, after 5 surgeries stills hurts. Pain affects my sleeping, bending, lifting, standing and walking. I have an aggressive form of heart disease. Heart attack, triple-bypass and double-bypass after affects, tiredness, get short of breathe easily, my lower extremities stay swollen and it is very painful to walk. I have anxiety and it makes it difficult to leave the house. I am told these disabilities will not get any better. Heart arterial bypassx2 1997 and 2006.

3. The claimant has the following severe impairment(s):

Allegation(s)

javascript:hideShowDataViewSection(%22Impairments,LimitationsandPain-InitialLevel%22)

Impairments, Limitations and Pain - Initial Level

Alleged Impairments: Coronary artery disease Blocked cardiac arteries, Blocked leg arteries, Back injury, Hypothyroidism, Painful walking, Edema in the lower extremities, Hypertension, Anxiety My numerous medical conditions cause combined symptoms. My back, after 5 surgeries stills hurts. Pain affects my sleeping, bending, lifting, standing and walking. I have an aggressive form of heart disease. Heart attack, triple-bypass and double-bypass after affects, tiredness, get short of breathe easily, my lower extremities stay swollen and it is very painful to walk. I have anxiety and it makes it difficult to leave the house. I am told these disabilities will not get any better. Heart arterial bypassx2 1997 and 2006.

Limitations: The anxiety and medicines and medical conditions cause me an inability to concentrate or focus on instructions. I am very forgetful and cannot sit for long periods of time. It is very painful to walk, lift, sit or stand for long periods of time. Unable to stay in any position for any length of time. I have to take lots of naps because I can't sleep at night because of pain and anxiety.

Pain/Other Symptoms: Yes

Impairments First Interfered With Ability to Work: June 15, 2006

Height: 6'

Weight: 250 lbs.

Client Remarks - 3368: Sec 4, E - For one or more of the hospital(s) I listed, I had more inpatient stays*Sec. 6, F - I had these tests more than once: EKG (Heart test), Treadmill (exercise test), Cardiac Catherization , Hearing Test, Vision Test, Blood Test (not HIV), Breathing Test, X-Ray, MRI/CT Scan*I knew my health was steadily declining and that I would have to retire from the [redacted] (regulations require retirement of [redacted] by the age 57). I knew my retirement wouldn't be enough for me and my family to live on, but I was planning on finding another job. Then I had the last 4 surgeries and concluded due to my conditions that I would not be able to continue working. *Internet medical form initiated on: 02/08/2007*

javascript:hideShowDataViewSection(%22EffectonWork-InitialLevel%22)

Effect on Work - Initial Level

Ever Worked: Yes

Working Now: No

When Stopped: 05/31/2006

Stopped Working Because: Because of other reasons (not my condition) The career that I had, required an annual

See Next Page

physical. In March of 2006 I did not pass the required physical. The particular Dr. that evaluated me concluded that, in his opinion, I would not be able to continue my present duties because of the heart bypass in 1997. I had the opportunity to voluntarily retire in May of 2006, so that's what I did, with the intention of retiring/changing careers. On June 15, 2006 I was diagnosed as needing a double bypass on my heart and arterial bypass in both legs. I don't believe that I am now able to work anymore.

Work After Impairment First Interfered: No

Explanation: took early retirement

javascript:hideShowDataViewSection(%22Impairments,LimitationsandEffects-ReconsiderationLevel%22)

Impairments, Limitations and Effects - Reconsideration Level

Any Changes in Condition: No

Any New Illnesses or Injuries: No

Any New Limitations: No

How Condition Affects Ability to Care for Personal Needs: Unable to stand or walk for very long.

How Daily Activities Changed: No change. No better.

Client Remarks - 3441: null* This report was completed on the Internet using i3441 (Public) by: Report Completer Name: [redacted] Report Completer Address: [redacted] Report Completer Phone Number: Report Completer Email Address: [redacted] Internet medical form submitted on: 12/18/2007

Work Since Original Claim Filed: No

Submitting New Evidence: No

Reason Appeal Requested: I AM DISABLED

javascript:hideShowDataViewSection(%22Impairments,LimitationsandEffects-HearingLevel%22)

Impairments, Limitations and Effects - Hearing Level

Any Changes in Condition: Yes

Changes in Condition: The time I can stand before I must sit and rest is getting shorter because of my increasing back pain.

Date Occurred: February 2008

Any New Illnesses or Injuries: Yes

New Illnesses, Injuries, or Conditions: I have now been diagnosed as a Type II Diabetic.

Date Occurred: 3/12/08

Any New Limitations: No

How Condition Affects Ability to Care for Personal Needs: I still care for my own personal needs.

How Daily Activities Changed: As I stated before, the time I can stand is getting shorter and shorter due to increasing back pain. I must sit and rest more often so any activity I do takes longer.

Client Remarks - 3441: I have been working part time since about December 2007. I only work 2 days a week driving a shuttle van from hotel to train. I work a 12 hour shift and am paid $7 per hour. I am able to change my position often and do not sit continuously. I am unable to work any more than 2 days due to my medical condition.* This report was completed on the Internet using i3441 (Public) by: Report Completer Name: [redacted] Report Completer Address: [redacted] 3034 Report Completer Phone Number: Report Completer Email Address: [redacted] Internet medical form submitted on: 03/27/2008

Worked Since Filing For Reconsideration: Yes

Submitting New Evidence: Yes

Reason Appeal Requested: [redacted] DISABLED DUE TO 2 HEART BYPASS S URGERIES, 5 BACK SURGERIES (FUSION), HEART DISEASE, SLEEP APNEA, HBP, HYPOTHYROID, FATIGUE & SHORTNESS OF BREATH.

(20 CFR 404.1520(c)).

See Next Page

4. The severity of the claimant's

Primary Musculoskeletal (01) Secondary Cardiovascular (04), etc.,	Disorders of back discogenic and degenerative (7240) Essential hypertension (4010), Coronary artery disease, Blocked cardiac arteries, Blocked leg arteries, Back injury, Hypothyroidism, Painful walking, Edema in the lower extremities, Hypertension, Anxiety My numerous medical conditions cause combined symptoms. My back, after 5 surgeries stills hurts. Pain affects my sleeping, bending, lifting, standing and walking. I have an aggressive form of heart disease. Heart attack, triple-bypass and double-bypass after affects, tiredness, get short of breathe easily, my lower extremities stay swollen and it is very painful to walk. I have anxiety and it makes it difficult to leave the house. I am told these disabilities will not get any better. Heart arterial bypassx2 1997 and 2006. The anxiety and medicines and medical conditions cause me an inability to concentrate or focus on instructions. I am very forgetful and cannot sit for long periods of time. It is very painful to walk, lift, sit or stand for long periods of time. Unable to stay in any position for any length of time. I have to take lots of naps because I can't sleep at night because of pain and anxiety related disorders (3000), obesity and hyperalimentation (2780), etc., Height: 6' Weight: 250 lbs.

meets the criteria of section(s) 1.04A, etc., of 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d)). The record shows the claimant is functional below the sedentary level for any sustained, continual or regular activity.

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

See Next Page

[redacted]

A. EXERTIONAL LIMITATIONS

☐ None established. (Proceed to section B.)

1. Occasionally lift and/or carry (including upward pulling) (maximum) - when less than one-third of the time or less than 10 pounds, explain the amount (time/pounds) in item 6.

   ☐ less than 10 pounds
   ☐ 10 pounds
   ☒ 20 pounds
   ☐ 50 pounds
   ☐ 100 pounds or more

2. Frequently lift and/or carry (including upward pulling) (maximum) - when less than two-thirds of the time or less than 10 pounds, explain the amount (time/pounds) in item 6.

   ☐ less than 10 pounds
   ☒ 10 pounds
   ☐ 25 pounds
   ☐ 50 pounds or more

3. Stand and/or walk (with normal breaks) for a total of -

   ☐ less than 2 hours in an 8-hour workday
   ☐ at least 2 hours in an 8-hour workday
   ☒ about 6 hours in an 8-hour workday
   ☐ medically required hand-held assistive device is necessary for ambulation

4. Sit (with normal breaks) for a total of -

   ☐ less than about 6 hours in an 8-hour workday
   ☒ about 6 hours in an 8-hour workday
   ☐ must periodically alternate sitting and standing to relieve pain or discomfort. (If checked, explain in 6.)

5. Push and/or pull (including operation of hand and/or foot controls) -

   ☒ unlimited, other than as shown for lift and/or carry
   ☐ limited in upper extremities (describe nature and degree)
   ☐ limited in lower extremities (describe nature and degree)

6. Explain how and why the evidence supports your conclusions in item 1 through 5.
   Cite the specific facts upon which your conclusions are based.
   Clt has had lumbar fusion. Has had coronary artery and peripheral artery disease with revascularization. Has no CHF. ETT 12-27-06 shows no ischemia at 6.76 mets by report of the cardiologist. No chest pain now. Does complain of leg and hip pain. Has ABI of 0.89 right and 0.96 left. Has normal xrays of hips and knees. Had lumbar fusion in 2004. Flexes lumbar 60 degrees now. No loss of sensation, reflexes, or motor.

See Next Page

[redacted]

B. POSTURAL LIMITATIONS

☐ None established. (Proceed to section C.)

	Frequently	Occasionally	Never
1. Climbing - ramp/stairs	☒	☐	☐
- ladder/rope/scaffolds	☒	☐	☐
2. Balancing	☒	☐	☐
3. Stooping	☐	☒	☐
4. Kneeling	☒	☐	☐
5. Crouching	☒	☐	☐
6. Crawling	☒	☐	☐

7. When less than two-thirds of the time for frequently or less than one-third for occasionally, fully describe and explain. Also explain how and why the evidence supports your conclusions in items 1 through 6. Cite the specific facts upon which your conclusions are based.
See A6

Specify the listing(s) (i.e., 12.02 through 12.10) under which the items below are being rated _____
12.06

FUNCTIONAL LIMITATION	DEGREE OF LIMITATION					
	None	Mild	Moderate	Marked*	Extreme*	Insufficient Evidence
1. Restriction of Activities of Daily Living	☐	☒	☐	☐	☐	☐
2. Difficulties in Maintaining Social Functioning	☐	☒	☐	☐	☐	☐
3. Difficulties in Maintaining Concentration, Persistence, or Pace	☐	☒	☐	☐	☐	☐

IV. CONSULTANT'S NOTES

The claimant is 56-04 y/o male. He denies being depressed, but he reports a "little bit" of anxiety for which he takes .1 mg. of Xanax daily. At MSE, he did not appear depressed. He reported that he is an avid news watcher, and he spends quite a bit of time working in the yard. He is retired from his job. His MSE was essentially unremarkable with no deficits in any domain, with the exception of working memory, which was possibly in the mildly problematic range. There have been no psych inpatient treatments.

DX-R/O Generalized Anxiety Disorder

See Next Page

[redacted]

[redacted]

Telephone: [redacted]
Fax:

"A complete cardiovascular research center"

VASCULAR LABORATORY
RESTING DOPPLER STUDIES

NAME: [redacted] DATE: 10/10/07

AGE: 56 SEX: M REFERRING PHYSICIAN: STATE OF OKLAHOMA

DIABETES: N HTN: Y CAD: Y HIGH CHOLESTEROL: Y

CLAUDICATION: Y PVD: N SMOKING: PAST: Y PRESENT: N

BRACHIALARTERY PRESSURE (mmHg): RIGHT: 144 LEFT: 146

LEG PRESSURES:	RIGHT	ABI	LEFT	ABI
COMMON FEMORAL	---	---	---	---
POPLITEAL	---	---	---	---
POSTERIOR TIBIAL	130	0.89	140	0.96
DORSALIS PEDIS	124	0.85	138	0.95

DOPPLER SIGNALS:	RIGHT	LEFT
COMMON FEMORAL	---	---
POPLITEAL	---	---
POSTERIOR TIBIAL	ABN	ABN
DORSALIS PEDIS	ABN	ABN

(N=NORMAL, ABN=ABNORMAL, O=ABSENT)

COMMENTS: The resting doppler signals are abnormal in both legs. The resting pressures are abnormal in the right leg and borderline normal in the left leg. These findings are consistent with mil blood flow decrease in the right leg.

PHYSICIAN SIGNATURE:

See Next Page

[redacted]

PATIENT [redacted] DATE 10/10/2007

ADDRESS AGE 56 SEX M

HEIGHT WEIGHT

TELEPHONE NO. BUILD LINEAR INTERMEDIATE LATERAL

OCCUPATION BLOOD PRESSURE

DOCTOR(S)

HISTORY HTN, CAD, Bypass Surgery Thrice, Hyperlipidemia, Ex Smoker for 20 yrs

MEDICATION

PATIENT POS. P-WAVES

AURIC. RATE T WAVES

VENT. RATE S-T SEGMENT

P-R INTERVAL RHYTHM

QRS INTERVAL ELEC. AXIS

Q-T INTERVAL ELEC. POSITION

FINDINGS THE RESTING DOPPLER TRACINGS ARE ABNORMAL IN BOTH LEGS

REMARKS

PATIENT [redacted]

ECG NO.

CASE NO. [redacted]

DATE 10/10/2007

See Next Page

[redacted]

DATE/DR.: 08-08-07 [redacted]
NAME:
SS/CASE #:

CHIEF COMPLAINT:
1. Severe hip pain.
2. History of heart problems.
3. Back problems.

HISTORY OF PRESENT ILLNESS:
The patient is a 56-year-old Caucasian male with a significant history of cardiovascular disease, including coronary artery disease, as well as peripheral vascular disease. The patient currently states that the most significant functional limitation he has is trouble walking, moving or doing work secondary to pain in his hips. He says his pain comes on basically with any sort of activity and is relieved with rest. It is bilateral in nature. It is sharp, although achy in nature. He is, however, able to ride a stationary bike for a while, which seems to help with the pain sometimes. He also some associated back pain and has a long history of back pain with one laminectomy, as well as one level fusion. He reports the current back pain is midline, approximately at L5-S1 in location on his back. It is non palpable. Exterior he does have pain that radiates into his left leg, specifically on the posterior aspect of his thigh. The patient currently denies any chest pain. He has not had any chest pain since his most recent CABG in 2006. He has not used nitroglycerine and feels like his functional limitation cardiovascularly is improved since that operation. The patient currently states that his main limitation is the hips, although he is hesitant to do anything physical secondary to his extensive cardiovascular history.

PAST MEDICAL HISTORY:
1. History of myocardial infarction.
2. Coronary artery disease.
3. Peripheral vascular disease.
4. Hypothyroid.
5. Degenerative disc disease.
6. Cataracts.

PAST SURGICAL HISTORY:
1. Three vessal CABG, 1997.
2. Two vessal CABG, 2006.
3. L4-L5 laminectomy in 2004.
4. Fusion L4-L5 2004.
5. Left sided stupedectomy.

See Next Page

Page 2

[redacted]

6. Right sided stapedectomy and subsequent redo secondary to infection.

SOCIAL HISTORY:
Past history of smoking, has not smoked for 3 years, denies alcohol or drugs. The patient is a retired l and has attempted to work as a truck driver, but he has had difficulty secondary to hip pain, as well as history of cardiovascular issues.

FAMILY HISTORY:
1. Strong family history of coronary artery disease.

PHYSICAL EXAMINATION:
VITAL SIGNS: Blood pressure is 160/90. Pulse is 85. Respirations are 12. Temperature is 98.3. Visual acuity: With glasses, 20/20 right; 20/20 left; without glasses, right 20/70; left 20/200. Height: 72 1/2 inches. Weight: 254 pounds.
GENERAL COMMENTS: The patient is very pleasant Caucasian male, cooperative, alert, awake and oriented in no acute distress at this time.
HEENT: Head is atraumatic, normocephalic. Pupils are equal, round, and reactive to light and accommodation. Extraocular muscles are intact. Nose and throat have moist and pink membrane. He has good dentition. No nodules are noted in his neck. No bruits when auscultated.
CARDIOVASCULAR: Regular rate and rhythm without murmur.
LUNGS: Clear to auscultation bilaterally.
ABDOMEN: Soft, and nontender. Bowel sounds are positive.
EXTREMITIES: No edema, cyanosis or clubbing. No lower extremity pulses were palpable, including dorsalis pedis and posterior tibial. The patient reports he typically has to find that with Doppler.
MUSCULOSKELETAL: No muscle spasms are noted. Muscle bulk was symmetric and appropriate. Deep tendon reflexes are 2+ upper and lower extremities. Range of motion: Please see range of motion sheet. The patient does have limited hip flexion as well as rotation. The patient was able to heel and toe walk effectively bilaterally. He was able to get up out of the chair easily and get on to the exam table easily. Joint exam was non specific. Straight-leg raise tests were positive on the left seated and it was positive bilaterally while supine.
NEUROLOGICAL: Cranial nerves II through XII are intact grossly. No focal deficits in sensation or strength were noted, other than the patient does have decrease in sensation on the left posterior and lateral aspect of his calf. His spine was not tender to palpation over the affected areas. Fine motor skills are appropriate and intact. He did not appear to have any radicular pain at the time of exam.

See Next Page

[redacted]

Page 3

[redacted]

MENTAL STATUS: Patient is alone. He was well kept. Motor behavior was appropriate. Speech, thought process and thought content were appropriate. Sensorium and cognition were appropriate, as was judgment and insight.

ASSESSMENT:

2. Severe hip pain with functional limitations.
3. History of significant cardiovascular disease, coronary artery disease and peripheral vascular disease. The patient currently denies chest pain and does not use nitro.
4. History of degenerative joint disease and disc disease.
5. Hypothyroid.
6. Cataracts.

_____DATE

Various physicians, treating and non-treating, have written that the claimant suffered from various medical problems and that the claimant has significant work restrictions. While the finding that a person is "disabled" under the provisions of the Social Security Act is an issue reserved to the Commissioner1 (SSR 96-5p1), opinions from any medical source on issues reserved to the Commissioner must never be ignored. The adjudicator is required to evaluate all evidence in the case record that may have a bearing on the determination or decision of disability, including opinions from medical sources about issues reserved to the Commissioner. If the case record contains an opinion from a medical source on an issue reserved to the Commissioner, the adjudicator must evaluate all the evidence in the case record to determine the extent to which the opinion is supported by the record.

The fact that the claimant's treating physician, after extensive examinations and treatment, has formed such opinion as to the claimant's ability to perform sustained work activity was precluded strongly suggests a significantly limited residual functional capacity. Further, considering the claimant's diagnoses and multitude of prescribed medications tried, the undersigned finds that treating physician's opinion is well support and is not inconsistent with the other substantial evidence in the case record; thus, it is afforded controlling weight (20 CFR 404.1527(d)(2) and SSR 96-2p).

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1 Under 20 CFR 404.1527(e), some issues are not medical issues regarding the nature and severity of an individual's impairment(s) but are administrative findings that are dispositive of a case; i.e., that would direct the determination or decision of disability. The following are examples of such issues:

1. Whether an individual's impairment(s) meets or is equivalent in severity to the requirements of any impairment(s) in the listings;
2. What an individual's RFC is;
3. Whether an individual's RFC prevents him or her from doing past relevant work;
4. How the vocational factors of age, education, and work experience apply; and
5. Whether an individual is "disabled" under the Act.

The regulations provide that the final responsibility for deciding issues such as these is reserved to the Commissioner. 11

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In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairment(s) could reasonably be expected to produce the alleged symptoms and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The State agency medical opinions are given little weight because other medical opinions are more consistent with the record as a whole and evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants. Furthermore, the State agency consultants did not adequately consider the claimant's subjective complaints or the combined effect of the claimant's impairments.

5. The claimant has been under a disability, as defined in the Social Security Act, from June 15, 2006 through the date of this decision (20 CFR 404.1520(d)).

DECISION

Based on the application for a period of disability and disability insurance benefits filed on February 8, 2007, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act beginning on June 15, 2006.

W. Howard O'Bryan, Jr. (0453)
Administrative Law Judge

APR 17 2008
Date

SOCIAL SECURITY ADMINISTRATION

Refer To: [redacted]

Office of Disability Adjudication and Review
301 Nw 6th St
3rd Floor West
Oklahoma City, OK 73102

Date: DEC 0 4 2007

[redacted]

NOTICE OF DECISION – FULLY FAVORABLE

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

This Decision is Fully Favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

The Appeals Council May Review The Decision On Its Own

The Appeals Council may decide to review my decision even though you do not ask it to do so. To do that, the Council must mail you a notice about its review within 60 days from the date shown above. Review at the Council's own motion could make the decision less favorable or unfavorable to you.

If You Disagree With The Decision

If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeals Council.

How to File an Appeal

To file an appeal you or your representative must request that the Appeals Council review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the **Appeals Council, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22041-3255**. Please put the Social Security number shown above on any appeal you file.

Permanent Subcommittee on Investigations
EXHIBIT #15

Time to File an Appeal

To file an appeal, you must file your request for review **within 60 days** from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time to Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider **with** your request for review.

How an Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The Council may review your case for any reason. It **will** review your case if one of the reasons for review listed in our regulation exists. Section 404.970 and Section 416.1470 of the regulation list these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

If No Appeal and No Appeals Council Review

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

See Next Page

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (405)799-0702. Its address is Social Security, 200 Ne 27, Moore, OK 73160.

W. Howard O'Bryan, Jr. (0453)
United States of America
Administrative Law Judge
Federal Administrative Judiciary

cc:

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability, Disability Insurance Benefits, and Supplemental Security Income
(Wage Earner)	[redacted] (Social Security Number)

I approve the fee agreement between the claimant and his representative subject to the condition that the claim results in past-due benefits. My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise excepted. I neither approve nor disapprove any other aspect of the agreement.

YOU MAY REQUEST A REVIEW OF THIS ORDER AS INDICATED BELOW

Fee Agreement Approval: You may ask us to review the approval of the fee agreement. If so, write us within 15 days from the day you get this order. Tell us that you disagree with the approval of the agreement and give your reasons. Your representative also has 15 days to write us if he or she does not agree with the approval of the fee agreement. Send your request to this address:

Joan E Parks Saunders, J. D.
Regional Chief Administrative Law Judge
SSA ODAR Regional Ofc
Rm 460
1301 Young St
Dallas, TX 75202

Fee Agreement Amount: You may also ask for a review of the amount of the fee due to the representative under this approved fee agreement. If so, please write directly to me as the deciding Administrative Law Judge within 15 days of the day you are notified of the amount of the fee due to the representative. Your representative also has 15 days to write me if he/she does not agree with the fee amount under the approved agreement.

See Next Page

You should include the social security number(s) shown on this order on any papers that you send us.

W. Howard O'Bryan, Jr. (0453)
United States of America
Administrative Law Judge
Federal Administrative Judiciary

Date DEC 0 4 2007

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	**CLAIM FOR**
[redacted]	Period of Disability, Disability Insurance Benefits[1], and Supplemental Security[2] Income
(Claimant)	
(Wage Earner)	[redacted] (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before the undersigned on a request for hearing dated November 7, 2007 (20 CFR 404.929 *et seq.*). The evidence of record ***supports a fully favorable decision; therefore no hearing[3] has been held*** (20 CFR 404.948(a) and 416.1448(a)). The claimant is represented by [redacted]**n attorney.**

The claimant is alleging disability since August 22, 2006.

ISSUES

The issue is whether the claimant is disabled under sections 216(i), 223(d) and 1614(a)(3)(A) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

With respect to the claim for a period of disability and disability insurance benefits, there is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through September 30, 2009. Thus, the

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[1] Title II of the Social Security Act is administered by the Social Security Administration. Title II appears in the United States Code as §§401-433, subchapter II, chapter 7, Title 42. http://www.ssa.gov/OP_Home/ssact/title02/0200.htm[11]

[2] *Regarding your SSI application only:* Eligibility for SSI payments is not dependent in any way upon insured status. With regard to claimant's Title XVI application, the payment of benefits may not be made for any period that precedes the date on which the claimant's application was filed (20 C.F.R. § 416.501). Therefore, for the purposes of this decision, a determination that disability covering the period from June 12, 2007 is considered to be a fully favorable determination.

[3] **20 Code of Federal Regulations Ch. III (4-1-06 edition) section 404.948: Deciding a case without an oral hearing before an administrative law judge.** (*a*) *Decision wholly favorable.* If the evidence in the hearing record supports a finding in favor of you and al the parties on every issue, the Administrative Law Judge may issue a hearing decision without holding an oral hearing. ... "

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claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful review of the entire record, the undersigned finds that the claimant has been disabled from August 22, 2006 through the date of this decision. The undersigned also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f) and 416.920(f)). If the claimant has the residual functional capacity to do her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation4 process (20 CFR 404.1520(g) and 416.920(g)), the undersigned must determine whether the claimant is able to do any other work considering her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, she is not disabled. If the claimant is not able to do other work and meets the duration requirement, she is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts5 to

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4 **The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment, which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy. To determine whether you are able to do any other work, we consider your residual functional capacity and your age, education, and work experience. http://www.ssa.gov/OP_Home/cfr20/404/404-1505.htm**

5 5 The burden of proof then shifts to the Commissioner to prove that the claimant is not disabled. The Administrative Law Judge must find the claimant disabled unless the Commissioner proves by substantial evidence that the claimant is presumptively not disabled under the Medical-Vocational Guidelines or rulings5; or that there exist a significant number of other jobs in the national economy that the claimant can perform with her limitations.5

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the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g), 404.1560(c), 416.912(g) and 416.960(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. The claimant's date last insured is September 30, 2009.

2. The claimant has not engaged in substantial gainful activity since August 22, 2006, the alleged onset date (20 CFR 404.1520(b), 404.1571 *et seq.*, 416.920(b) and 416.971 *et seq.*).

Vocational Information

javascript:hideShowDataViewSection(%22JobsWorkedintheLast15years%22)

Jobs Worked in the Last 15 years

Job Title	Type of Business	From	To
1. cashier/stocker	retail grocer	2001	2002
2. facility maintenance--repair	job corps	2003	2004
3. landscaper	landscaping business/departments	08/2004	02/15/2006

javascript:hideShowDataViewSection(%22WorkDevelopment-InitialLevel%22)

Work Development - Initial Level

Claim Type: DIB

820/821 Pending: No

javascript:hideShowDataViewSection(%22Ticket/ProgramInformation-InitialLevel%22)

Ticket/Program Information - Initial Level

Participate in Ticket program or another program? No

javascript:hideShowDataViewSection(%22Ticket/ProgramInformation-ReconsiderationLevel%22)

Ticket/Program Information - Reconsideration Level

Participate in Ticket program or another program? No

javascript:hideShowDataViewSection(%22Ticket/ProgramInformation-HearingLevel%22)

Ticket/Program Information - Hearing Level

Participate in Ticket program or another program? No

javascript:hideShowDataViewSection(%22AdditionalRehabilitationInformation%22)

Additional Rehabilitation Information

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Working now? ***No***

Stopped working because: ***Because of the pain.***

Stopped working when: ***09/15/2006***

Alleged Impairments: ***Back pain that affects right leg***

3. The claimant has the following severe impairment(s):

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Disorders of back[6] discogenic and	Obesity[7] and hyperalimentation (2780),

[6] *1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:*

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitations of motion of the spine, Motorola's (atrophy with associated muscle weakness or muscle weakness) accompanied by century or reflex losses and, if there is involvement of the low back, policy straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by operative notes or pathology reports of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every two hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic non- radicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B 2b.

[7]

POLICY INTERPRETATION RULING

TITLES II AND XVI: EVALUATION OF OBESITY

This Ruling supersedes SSR 00-3p, Titles II and XVI: Evaluation of Obesity (65 FR 31039, May 15, 2000).

PURPOSE: To provide guidance on SSA policy concerning the evaluation of obesity in disability claims filed under titles II and XVI of the Social Security Act (the Act).

CITATIONS: Sections 216(i), 223(d), 223(f), 1614(a), and 1614(e) of the Act, as amended; Regulations No. 4, subpart P, sections 404.1502, 404.1508, 404.1509, 404.1512, 404.1520, 404.1521, 404.1523, 404.1525, 404.1526, 404.1528, 404.1529, 404.1530, 404.1545, 404.1546, 404.1561, 404.1594, and appendix 1; and Regulations No. 16, subpart I, sections 416.902, 416.908, 416.909, 416.912, 416.920, 416.921, 416.923, 416.924, 416.925, 416.926, 416.926a, 416.928, 416.929, 416.930, 416.933, 416.945, 416.946, 416.961, 416.994, and 416.994a.

INTRODUCTION: On August 24, 1999, we[7] published a final rule in the Federal Register deleting listing 9.09, Obesity, from the Listing of Impairments in 20 CFR, subpart P, appendix 1 (the listings). The final rule was effective on October 25, 1999. 64 FR 46122 (1999).

We stated in the preamble to the final rule that we deleted listing 9.09 because our experience adjudicating cases under this listing indicated that the criteria in the listing were not appropriate indicators of listing-level severity. In our experience, the criteria in listing 9.09 did not represent a degree of functional limitation that would prevent an individual from engaging in any gainful activity.

However, even though we deleted listing 9.09, we made some changes to the listings to ensure that obesity is still addressed in our listings. In the final rule, we added paragraphs to the prefaces of the musculoskeletal, respiratory, and cardiovascular body system listings that provide guidance about the potential effects obesity has in causing or contributing to impairments in those body systems. See listings sections 1.00Q, 3.001, and 4.00F. The paragraphs state that we consider obesity to be a medically determinable impairment and remind adjudicators to consider its effects when evaluating disability. The provisions also remind adjudicators that the combined effects of obesity with other impairments can be greater than the effects of each of the impairments considered separately. They also instruct adjudicators to consider the effects of obesity not only under the listings but also when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity.

When we published that final rule, in response to public comments, we stated that we would provide additional guidance in a Social Security Ruling (SSR). (64 FR at 46126) On May 15, 2000, we published SSR 00-3p (65 FR 31039) to provide that additional guidance by discussing how we evaluate obesity in disability claims filed by adults and children under titles II and XVI of the Act. Since then, we have published several final rules that revise some of the criteria we use to evaluate disability claims under titles II and XVI of the Social Security Act. We are issuing this SSR to reflect the changes to the rules that we have published since we published SSR 00-3p.

POLICY INTERPRETATION:

General

See Next Page

1. What is obesity?

Obesity is a complex, chronic disease characterized by excessive accumulation of body fat. Obesity is generally the result of a combination of factors (e.g., genetic, environmental, and behavioral).

In one sense, the cause of obesity is simply that the energy (food) taken in exceeds the energy expended by the individual's body. However, the influences on intake, the influences on expenditure, the metabolic processes in between, and the overall genetic controls are complex and not wel understood.

The National Institutes of Health (NIH) established medical criteria for the diagnosis of obesity in its Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults (NIH Publication No. 98-4083, September 1998). These guidelines classify overweight and obesity in adults according to Body Mass Index (BMI). BMI is the ratio of an individual's weight in kilograms to the square of his or her height in meters (kg/m^2). For adults, both men and women, the Clinical Guidelines describe a BMI of 25-29.9 as "overweight" and a BMI of 30.0 or above as "obesity."

The Clinical Guidelines recognize three levels of obesity. Level I includes BMIs of 30.0-34.9. Level II includes BMIs of 35.0-39.9. Level III, termed "extreme" obesity and representing the greatest risk for developing obesity-related impairments, includes BMIs greater than or equal to 40. These levels describe the extent of obesity, but they do not correlate with any specific degree of functional loss.

In addition, although there is often a significant correlation between BMI and excess body fat, this is not always the case. The Clinical Guidelines also provide for considering whether an individual of a given height and weight has excess body fat when determining whether he or she has obesity. Thus, it is possible for someone whose BMI is below 30 to have obesity if too large a percentage of the weight is from fat. Likewise, someone with a BMI above 30 may not have obesity if a large percentage of the weight is from muscle. However, in most cases, the BMI will show whether the individual has obesity. It also will usually be evident from the information in the case record whether the individual should not be found to have obesity, despite a BMI of 30.0 or above. See question 4, below.

The Clinical Guidelines do not provide criteria for diagnosing obesity in children. However, a BMI greater than or equal to the 95th percentile for a child's age is generally considered sufficient to establish the diagnosis of obesity. (BMIs in the 95th percentile vary by age and sex of the child.) BMI-for-age-and-gender charts are published in medical textbooks or professional journals and by the National Center for Health Statistics. As with adults, the amount of body fat is considered in making the diagnosis of obesity in children.

Treatment for obesity is often unsuccessful. Even if treatment results in weight loss at first, weight lost is often regained, despite the efforts of the individual to maintain the loss. See question 13, below, for additional discussion of obesity treatment.

2. How does obesity affect physical and mental health?

Obesity is a risk factor that increases an individual's chances of developing impairments in most body systems. It commonly leads to, and often complicates, chronic diseases of the cardiovascular, respiratory, and musculoskeletal body systems. Obesity increases the risk of developing impairments such as type II (so-called adult onset) diabetes mellitus—even in children; gall bladder disease; hypertension; heart disease; peripheral vascular disease; dyslipidemia (abnormal levels of fatty substances in the blood); stroke; osteoarthritis; and sleep apnea. It is associated with endometrial, breast, prostate, and colon cancers, and other physical impairments. Obesity may also cause or contribute to mental impairments such as depression. The effects of obesity may be subtle, such as the loss of mental clarity and slowed reactions that may result from obesity-related sleep apnea.

The fact that obesity is a risk factor for other impairments does not mean that individuals with obesity necessarily have any of these impairments. It means that they are at greater than average risk for developing the other impairments.

3. How do we consider obesity in the sequential evaluation process?

We will consider obesity in determining whether:

- The individual has a medically determinable impairment. See question 4.
- The individual's impairment(s) is severe. See question 6.
- The individual's impairment(s) meets or equals the requirements of a listed impairment in the listings. See question 7. (We use special

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rules for some continuing disability reviews. See question 11.)

- The individual's impairment(s) prevents him or her from doing past relevant work and other work that exists in significant numbers in the national economy. However, these steps apply only in title II and adult title XVI cases. See questions 8 and 9.

4. How is obesity identified as a medically determinable impairment?

When establishing the existence of obesity, we will generally rely on the judgment of a physician who has examined the claimant and reported his or her appearance and build, as well as weight and height. Thus, in the absence of evidence to the contrary in the case record, we will accept a diagnosis of obesity given by a treating source or by a consultative examiner. However, if there is evidence that indicates that the diagnosis is questionable and the evidence is inadequate to determine whether or not the individual is disabled, we will contact the source for clarification, using the guidelines in 20 CFR 404.1512(e) and 416.912(e).

When the evidence in a case does not include a diagnosis of obesity, but does include clinical notes or other medical records showing consistently high body weight or BMI, we may ask a medical source to clarify whether the individual has obesity. However, in most such cases we will use our judgment to establish the presence of obesity based on the medical findings and other evidence in the case record, even if a treating or examining source has not indicated a diagnosis of obesity. Generally, we will not purchase a consultative examination just to establish the diagnosis of obesity.

When deciding whether an individual has obesity, we will also consider the individual's weight over time.[7] We will not count minor, short-term weight loss. We will consider the individual to have obesity as long as his or her weight or BMI shows essentially a consistent pattern of obesity. (See question 13 for a discussion of weight loss and medical improvement.)

Finally, there are a number of methods for measuring body fat and, if such information is in a case record, we will consider it. However, we will not purchase such testing. In most cases, the medical and other evidence in the case record will establish whether the individual has obesity.

5. Can we find an individual disabled based on obesity alone?

If an individual has the medically determinable impairment obesity that is "severe" as described in question 6, we may find that the obesity medically equals a listing. (In the case of a child seeking benefits under title XVI, we may also find that it functionally equals the listings.) We may also find in a title II claim, or an adult claim under title XVI, that the obesity results in a finding that the individual is disabled based on his or her residual functional capacity (RFC), age, education, and past work experience. However, we will also consider the possibility of coexisting or related conditions, especially as the level of obesity increases. We provide an example of when we may find obesity to medically equal a listing in question 7.

Sequential Evaluation:
Step 2, Severe Impairment

6. When is obesity a "severe" impairment?

As with any other medical condition, we will find that obesity is a "severe" impairment when, alone or in combination with another medically determinable physical or mental impairment(s), it significantly limits an individual's physical or mental ability to do basic work activities. (For children applying for disability under title XVI, we will find that obesity is a "severe" impairment when it causes more than minimal functional limitations.) We will also consider the effects of any symptoms (such as pain or fatigue) that could limit functioning. (See SSR 85-28, "Titles II and XVI: Medical Impairments That Are Not Severe" and SSR 96-3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms In Determining Whether a Medically Determinable Impairment Is Severe.") Therefore, we will find that an impairment(s) is "not severe" only if it is a slight abnormality (or a combination of slight abnormalities) that has no more than a minimal effect on the individual's ability to do basic work activities (or, for a child applying under title XVI, if it causes no more than minimal functional limitations).

There is no specific level of weight or BMI that equates with a "severe" or a "not severe" impairment. Neither do descriptive terms for levels of obesity (e.g., "severe," "extreme," or "morbid" obesity) establish whether obesity is or is not a "severe" impairment for disability program purposes. Rather, we will do an individualized assessment of the impact of obesity on an individual's functioning when deciding whether the impairment is severe.

Sequential Evaluation
Step 3, The Listings

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7. How do we evaluate obesity at step 3 of sequential evaluation, the listings?

Obesity may be a factor in both "meets" and "equals" determinations.

Because there is no listing for obesity, we will find that an individual with obesity "meets" the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing. We will also find that a listing is met if there is an impairment that, in combination with obesity, meets the requirements of a listing. For example, obesity may increase the severity of coexisting or related impairments to the extent that the combination of impairments meets the requirements of a listing. This is especially true of musculoskeletal, respiratory, and cardiovascular impairments. It may also be true for other coexisting or related impairments, including mental disorders.

For example, when evaluating impairments under mental disorder listings 12.05C, 112.05D, or 112.05F, obesity that is "severe," as explained in question 6, satisfies the criteria in listing 12.05C for a physical impairment imposing an additional and significant work-related limitation of function and in listings 112.05D and 112.05F for a physical impairment imposing an additional and significant limitation of function. We will find the requirements of listing 12.05 are met if an individual's impairment satisfies the diagnostic description in the introductory paragraph of listing 12.05 and any one of the four sets of criteria in the listing. In the case of an individual under age 18, we will find that the requirements of listing 112.05 are met if the child's impairment satisfies the diagnostic description in the introductory paragraph of listing 112.05 and any one of the six sets of criteria in the listing. (See sections 12.00A and 112.00A of the listings.)

We may also find that obesity, by itself, is medically equivalent to a listed impairment (or, in the case of a child applying under title XVI, also functionally equivalent to the listings). For example, if the obesity is of such a level that it results in an inability to ambulate effectively, as defined in sections 1.00B2b or 101.00B2b of the listings, it may substitute for the major dysfunction of a joint(s) due to any cause (and its associated criteria), with the involvement of one major peripheral weight-bearing joint in listings 1.02A or 101.02A, and we will then make a finding of medical equivalence. (See question 8 for further discussion of evaluating the functional effects of obesity, including functional equivalence determinations for children applying for benefits under title XVI.)

We will also find equivalence if an individual has multiple impairments, including obesity, no one of which meets or equals the requirements of a listing, but the combination of impairments is equivalent in severity to a listed impairment. For example, obesity affects the cardiovascular and respiratory systems because of the increased workload the additional body mass places on these systems. Obesity makes it harder for the chest and lungs to expand. This means that the respiratory system must work harder to provide needed oxygen. This in turn makes the heart work harder to pump blood to carry oxygen to the body. Because the body is working harder at rest, its ability to perform additional work is less than would otherwise be expected. Thus, we may find that the combination of a pulmonary or cardiovascular impairment and obesity has signs, symptoms, and laboratory findings that are of equal medical significance to one of the respiratory or cardiovascular listings.[7]

However, we will not make assumptions about the severity or functional effects of obesity combined with other impairments. Obesity in combination with another impairment may or may not increase the severity or functional limitations of the other impairment. We will evaluate each case based on the information in the case record.

Sequential Evaluation:

Steps 4 and 5, Assessing Functioning in Adults
Step 3, Assessing Functional Equivalence in Children

8. How do we evaluate obesity in assessing residual functional capacity in adults and functional equivalence in children?

Obesity can cause limitation of function. The functions likely to be limited depend on many factors, including where the excess weight is carried. An individual may have limitations in any of the exertional functions such as sitting, standing, walking, lifting, carrying, pushing, and pulling. It may also affect ability to do postural functions, such as climbing, balance, stooping, and crouching. The ability to manipulate may be affected by the presence of adipose (fatty) tissue in the hands and fingers. The ability to tolerate extreme heat, humidity, or hazards may also be affected.

The effects of obesity may not be obvious. For example, some people with obesity also have sleep apnea. This can lead to drowsiness and lack of mental clarity during the day. Obesity may also affect an individual's social functioning.

An assessment should also be made of the effect obesity has upon the individual's ability to perform routine movement and necessary physical activity within the work environment. Individuals with obesity may have problems with the ability to sustain a function over time. As explained in SSR 96-8p ("Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims"), our RFC assessments must consider an individual's maximum remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis. A "regular and continuing basis" means 8 hours a day, for 5 days a week, or an equivalent work schedule.[7] In cases involving obesity, fatigue may affect the individual's physical and mental ability to sustain work activity. This may be particularly true in cases involving sleep apnea.

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The combined effects of obesity with other impairments may be greater than might be expected without obesity. For example, someone with obesity and arthritis affecting a weight-bearing joint may have more pain and limitation than might be expected from the arthritis alone.

For a child applying for benefits under title XVI, we may evaluate the functional consequences of obesity (either alone or in combination with other impairments) to decide if the child's impairment(s) functionally equals the listings. For example, the functional limitations imposed by obesity, by itself or in combination with another impairment(s), may establish an extreme limitation in one domain of functioning (e.g., Moving about and manipulating objects) or marked limitations in two domains (e.g., Moving about and manipulating objects and Caring for yourself).

As with any other impairment, we will explain how we reached our conclusions on whether obesity caused any physical or mental limitations.

9. How can we consider obesity in the assessment of RFC when SSR 96-8p says, "Age and body habitus are not factors in assessing RFC"?

The SSR goes on to say that "[i]t is incorrect to find that an individual has limitations beyond those caused by his or her medically determinable impairment(s) and any related symptoms, due to such factors as age and natural body build, and the activities the individual was accustomed to doing in his or her previous work." (Emphasis added.) We included the italicized statement in the SSR to distinguish between individuals who have a medically determinable impairment of obesity and individuals who do not. When we identify obesity as a medically determinable impairment (see question 4, above), we will consider any functional limitations resulting from the obesity in the RFC assessment, in addition to any limitations resulting from any other physical or mental impairments that we identify.

Effect of the Rules Change:

Claims in Which Prior Listings Apply
and Do Not Apply

10. How does the deletion of listing 9.09 affect claims pending on October 25, 1999?

The final rules that deleted the listing became effective on October 25, 1999. The final rules deleting listing 9.09 apply to claims that were filed before October 25, 1999, and that were awaiting an initial determination or that were pending appeal at any level of the administrative review process or that had been appealed to court. The change affected the entire claim, including the period before October 25, 1999. This is our usual policy with respect to any change in our listings.

However, different rules apply to individuals who were already found eligible to receive benefits prior to October 25, 1999. For an explanation of how we apply listing 9.09 in continuing disability reviews, see question 11.

11. How does deletion of listing 9.09 affect claims already allowed?

Deletion of listing 9.09 does not affect the entitlement or eligibility of individuals receiving benefits because their impairment(s) met or equaled that listing. We will not find that their disabilities have ended just because we deleted listing 9.09.

We must periodically review all claims to determine whether the individual's disability continues. When we conduct a periodic continuing disability review (CDR), we will not find that an individual's disability has ended based on a change in a listing. For individuals receiving disability benefits under title II and adults receiving payments under title XVI, we apply the medical improvement review standard described in 20 CFR 404.1594 and 416.994.

We will first evaluate whether the individual's impairment(s) has medically improved and, if so, whether any medical improvement is related to the ability to work. If the individual's impairment(s) has not medically improved, we will find that he or she is still disabled, unless we find that an exception to the medical improvement standard applies. Even if the impairment(s) has medically improved, we will find that the improvement is not related to the ability to work if the impairment(s) continues to meet or equal the same listing section used to make our most recent favorable decision. This is true even if we have since deleted the listing section that we used to make the most recent favorable decision. See 20 CFR 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A). We apply a similar provision when we do CDRs for individuals who have not attained age 18 and who are eligible for title XVI benefits based on disability (20 CFR 416.994a(b)(2)).

Even if the individual's impairment(s) has medically improved and no longer meets or equals prior listing 9.09, we must still determine whether he or she is currently disabled, considering all of the impairments.

12. What amount of weight loss would represent "medical improvement"?

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Because an individual's weight may fluctuate over time and minor weight changes are of little significance to an individual's ability to function, it is not appropriate to conclude that an individual with obesity has medically improved because of a minor weight loss. A loss of less than 10 percent of initial body weight is too minor to result in a finding that there has been medical improvement in the obesity. However, we will consider that obesity has medically improved if an individual maintains a consistent loss of at least 10 percent of body weight for at least 12 months. We will not count minor, short-term changes in weight when we decide whether an individual has maintained the loss consistently.

If there is a coexisting or related condition(s) and the obesity has not improved, we will still consider whether the coexisting or related condition(s) has medically improved.

If we find that there has been medical improvement in obesity or in any coexisting or related condition(s), we must also decide whether the medical improvement is related to the ability to work. If necessary, we will also decide whether any exceptions to the medical improvement review standard apply and, if appropriate, whether the individual is currently disabled.

13. What are the goals and methods of treatment for obesity?

Obesity is a disease that requires treatment, although in most people the effect of treatment is limited. However, if untreated, it tends to progress.

A common misconception is that the goal of treatment is to reduce weight to a "normal" level. Actually, the goal of realistic medical treatment for obesity is only to reduce weight by a reasonable amount that will improve health and quality of life. People with extreme obesity, even with treatment, will generally continue to have obesity. Despite short-term progress, most treatments for obesity do not have a high success rate.

Recommended treatment for obesity depends upon the level of obesity. At levels I and II (BMI 30.0-39.9), treatment usually consists of behavior modification (diet and exercise) with the option of medication, usually either in the form of a fat-blocking drug or an appetite suppressant. Some people do not respond to medication, while others experience negative side effects. (In making our decision, we will also consider any side effects of medication the individual experiences.) Individuals with coexisting or related conditions may not be able to take medication because of its effects on their other conditions.

Generally, physicians recommend surgery when obesity has reached level III (BMI 40 or greater). However, surgery may also be an option at level II (BMI 35-39.9) if there is a serious coexisting or related condition. Obesity surgery modifies the stomach, the intestines, or both in order to reduce the amount of food that the individual can eat at one meal or the time food is available for digestion and absorption. Surgery is generally a last resort with individuals for whom other forms of treatment have failed. Some individuals also experience significant negative side effects from surgery (e.g., "dumping syndrome" – that is, rapid emptying of the stomach's contents marked by various signs and symptoms).

Obesity is a life-long disease. Even when treatment has been successful, individuals with obesity generally need to stay in treatment or they will gain weight again, just as individuals with other impairments may need to stay in treatment. Individuals who have had surgery should receive continuing follow-up care because of health risks related to the surgery. As with other chronic disorders, effective treatment of obesity requires regular medical follow-up.

14. How do we evaluate failure to follow prescribed treatment in obesity cases?

Before failure to follow prescribed treatment for obesity can become an issue in a case, we must first find that the individual is disabled because of obesity or a combination of obesity and another impairment(s). Our regulations at 20 CFR 404.1530 and 416.930 provide that, in order to get benefits, an individual must follow treatment prescribed by his or her physician if the treatment can restore the ability to work, unless the individual has an acceptable reason for failing to follow the prescribed treatment. We will rarely use "failure to follow prescribed treatment" for obesity to deny or cease benefits.

SSR 82-59, "Titles II and XVI: Failure To Follow Prescribed Treatment," explains that we will find failure to follow prescribed treatment only when all of the following conditions exist:

- The individual has an impairment(s) that meets the definition of disability, including the duration requirement, and
- A treating source has prescribed treatment that is clearly expected to restore the ability to engage in substantial gainful activity, and
- The evidence shows that the individual has failed to follow prescribed treatment without a good reason.

If an individual who is disabled because of obesity (alone or in combination with another impairment(s)) does not have a treating source who has prescribed treatment for the obesity, there is no issue of failure to follow prescribed treatment.

The treatment must be prescribed by a treating source, as defined in our regulations at 20 CFR 404.1502 and 416.902, not simply recommended. A treating source's statement that an individual "should" lose weight or has "been advised" to get more exercise is not prescribed treatment.

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degenerative (7240), etc., etc., etc.,	etc., etc., etc.,

Allegation(s)

javascript:hideShowDataViewSection(%22Impairments,LimitationsandPain-InitialLevel%22)

Impairments, Limitations and Pain - Initial Level

Alleged Impairments: Back pain that affects right leg

Limitations: I can't sit or stand for long periods of time. I can't walk that well because of my right leg pain. I can't do a lot of things now that I could do when I was healthy--like I can't work on my truck or play with my son. I can't stand or walk more than 10 minutes at a time. I can't think when I am in pain--I just think about sitting down or lying down. I have a difficult time concentrating.

Pain/Other Symptoms: Yes

Impairments First Interfered With Ability to Work: 08/22/2006

Height: 5' 9"

Weight: 325 lbs.

Client Remarks - 3368: I injured myself because I fell off the lawn mower and had to maneuver it so it wouldn't hit the car that was coming.

javascript:hideShowDataViewSection(%22EffectonWork-InitialLevel%22)

Effect on Work - Initial Level

When a treating source has prescribed treatment for obesity, the treatment must clearly be expected to improve the impairment to the extent that the person will not be disabled. As noted in question 13, the goals of treatment for obesity are generally modest, and treatment is often ineffective. Therefore, we will not find failure to follow prescribed treatment unless there is clear evidence that treatment would be successful. The obesity must be expected to improve to the point at which the individual would not meet our definition of disability, considering not only the obesity, but any other impairment(s).

Finally, even if we find that a treating source has prescribed treatment for obesity, that the treatment is clearly expected to restore the ability to engage in SGA, and that the individual is not following the prescribed treatment, we must still consider whether the individual has a good reason for doing so. In making this finding, we will follow the guidance in our regulations and SSR 82-59, which provide that acceptable justifications for failing to follow prescribed treatment include, but are not limited to, the following:

- The specific medical treatment is contrary to the teaching and tenets of the individual's religion.
- The individual is unable to afford prescribed treatment that he or she is willing to accept, but for which free community resources are unavailable.
- The treatment carries a high degree of risk because of the enormity or unusual nature of the procedure.

In this regard, most health insurance plans and Medicare do not defray the expense of treatment for obesity. Thus, an individual who might benefit from behavioral or drug therapy might not be able to afford it. Also, because not enough is known about the long-term effects of medications used to treat obesity, some people may be reluctant to use them due to the potential risk.

Because of the risks and potential side effects of surgery for obesity, we will not find that an individual has failed to follow prescribed treatment for obesity when the prescribed treatment is surgery.

EFFECTIVE DATE: This Ruling is effective upon publication in the Federal Register.

CROSS-REFERENCES: SSR 82-52, "Titles II and XVI: Duration of the Impairment;" SSR 82-59, "Titles II and XVI: Failure To Follow Prescribed Treatment;" SSR 85-28, "Titles II and XVI: Medical Impairments That Are Not Severe;" SSR 96-3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms In Determining Whether a Medically Determinable Impairment Is Severe;" SSR 96-6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence;" SSR 96-8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims;" and Program Operations Manual System sections DI 23010.005 ff., DI 24510.006, DI 24570.001, DI 34001.010, DI 34001.014, and DI 34001.016.

Ever Worked: Yes
Working Now: No
When Stopped: 09/15/2006
Stopped Working Because: Because of the pain.
Work After Impairment First Interfered: Yes
Change Attendance: Yes
Explanation: I was injured 08/22/2006. I was off for a couple of weeks and then I went back for one day and couldn't stand the pain and had to stop working.

javascript:hideShowDataViewSection(%22Impairments,LimitationsandEffects-ReconsiderationLevel%22)

Impairments, Limitations and Effects - Reconsideration Level

Any Changes in Condition: Yes
Changes in Condition: The pane in back and right leg is getting worse.
Date Occurred: unknown
Any New Illnesses or Injuries: Yes
New Illnesses, Injuries, or Conditions: getting harder to do everyday things
Date Occurred: unknown
Any New Limitations: Yes
New Limitations: can't walk that well.
Date Occurred: unknown
How Condition Affects Ability to Care for Personal Needs: It make it harder to which I can't bend over I have to get someone to help me and people have to be there for me most of the time
How Daily Activities Changed: none
Work Since Original Claim Filed: No
Submitting New Evidence: No
Reason Appeal Requested: I AM DISABLED

javascript:hideShowDataViewSection(%22Impairments,LimitationsandEffects-HearingLevel%22)

Impairments, Limitations and Effects - Hearing Level

Any Changes in Condition: Yes
Changes in Condition: The pain is getting worse
Date Occurred: none
Any New Illnesses or Injuries: No
Any New Limitations: No
How Condition Affects Ability to Care for Personal Needs: It takes me a very long time to do stuff. I have to sit down because of the pain.
How Daily Activities Changed: It is getting harder to do stuff.
Worked Since Filing For Reconsideration: No
Submitting New Evidence: No
Reason Appeal Requested: NONE PROVIDED

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(20 CFR 404.1520(c) and 416.920(c)).

4. The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d)and 416.920(d)). After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform sedentary work except the record shows the claimant is functional8 below the sedentary level for any sustained, continual or regular activity9. In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and 416.929 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and 416.927 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

STATEMENT OF THE CASE:

The claimant filed a concurrent claim alleging a date of onset of 8/22/06; last SGA 8/06, date of filing 7/5/07, which would give a first date of entitlement for DIB benefits of 2/07 and SSI benefits of 8/1/07. The PIA is unknown. The ACEH is unknown. The claim does involve a workers' compensation case with a date of onset of 8/22/06, being an injury to the right hip, low back, with radicular pain into the right leg as well as situational depression.

The claim does involve ***obesity***, which is a material factor in the claim which will be discussed with particularity hereinafter.

The rates of compensation, by agreement of the parties, are $213.36 for temporary total disability as well as permanent partial disability and a total of 16 weeks has been paid from 11/3/06 to 2/22/07. No adjudicatory orders have been entered in the case, only a Form A appointing Dr. , a treating physician.

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8 Residual functional capacity is the claimant's maximum remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis. A "regular and continuing basis" means eight (8) hours a day, for five (5) days (i.e., forty (40) hours) a week or an equivalent work schedule (Social Security Ruling 96-8p). The claimant must have both the mental and physical abilities to perform sustained work activities. Since the evidence supports a finding that the claimant has had a substantial loss of ability to meet the demands of basic work related activities on a sustained basis, the unskilled, sedentary occupational base is significantly eroded and a finding of disability is justified under Social Security Ruling 96-9p. 88

9 **Social Security Ruling 96-8p** provides that a finding of disabled is appropriate whenever there is an inability to persist at work-like tasks for the full course of an 8-hour workday or 5-day workweek. Clearly, the claimant's medically determinable severe impairments preclude the claimant from engaging in substantial gainful activity on a regular and continuing basis. **Social Security Ruling 96-9p** stipulates that an individual who has the residual functional capacity for less than a full range of sedentary work should be considered disabled if their restrictions would significantly erode the occupational base for sedentary work. The claimant is markedly, functionally limited. Thus, a finding of disabled is warranted. **Medical-Vocational Rule 201.00 (h) Appendix 2, Subpart P, Regulations No.** 4 may be used as the framework for the decision. It directs a finding of disabled. **Social Security Ruling 85-15** and **Social Security Ruling 96-9p** both stipulate that an individual must, on a sustained basis, be able to understand, remember and carry out simple instructions; make simple work-related decisions; respond appropriately to supervision, coworkers, usual work situations and to deal with changes in a routine work setting. A substantial loss of ability to meet any one of these basic work-related activities would severely limit the potential occupational base for all age groups and warrant a finding of disabled.

PERSONAL HISTORY:

resides at SSN is has a date of birth of 24 years of age, is single having never been married, and lives with his mother and minor son, who is dependent:

The claimant appears to have a prior application, is a United States citizen by birth, has no felony convictions and has no prior workers' compensation claims.

EDUCATION: The claimant graduated high school from in attempted to go to a Junior College for only one semester and entered Job Corp, where he received a certificate for "facility maintenance." The claimant has no military service, does not have an as it was suspended for failure to have insurance.

* The claimant appears to have a learning disability and is very slow and was a poor student.

EARNINGS: (See Exhibit in the record)

WORK HISTORY:

Employer	Type of Work	Wages	Dates
	Landscaping	$8.00 hr x 40	(3 mo) to 8/22/06 Seasonal Work

Duties involved lifting occasionally 50 pounds, frequently 20 pounds, with walking, standing, bending, stooping, balance, and bilateral use of the hands. The claimant states he was the "foreman" in that he had two other people which he supervised in his crew, he directed their work and had no right to hire and fire.

	Landscaping		(3 mo) to Seasonal Work

Duties involved lifting occasionally 50 pounds, frequently 20 pounds, with walking, standing, bending, stooping, balance, and bilateral use of the hands.

	Landscaping	Wages unknown	Off and on for 3 years

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Duties involved lifting occasionally 50 pounds, frequently 20 pounds, with walking, standing, bending, stooping, balance, and bilateral use of the hands.

PRIOR INJURIES/ACCIDENTS AND MEDICAL:

13 years	***Oklahoma City Children's Hospital***
	Surgery, chronic ear infections
2001	broken ankle – two surgeries
	Splinter in eye while working in wood shop – no claim filed

FACTS OF ACCIDENT/INJURIES SUSTAINED:

On 8/22/06, the claimant was pushing a large 42 inch mower on the side of a hill and twisted and injured himself when he tried to brace himself and thereby sustained an injury to his right hip and back. The patient was initially seen at [redacted] He was given medications and returned to work. The following day, he tried to return to work but could not due to the severe pain in his right hip and back. He was seen in the ER, evaluated and given medication and referred back to [redacted] On follow up, the patient was again placed on medication and released back to regular duty.

The patient continued to have pain in his right hip and back and noticed the pain radiating up into his back and became severe.

The patient has constant pain in his right hip and has difficulty sitting, standing, going up and down stairs, or inclines. The patient cannot squat or kneel. He rates his pain at a 10 on a 10 point scale. He states the pain moves up his right hip and into his leg and from his right hip into his lower back. He states he has pain in hip that will go down to his calf causing numbness and tingling into the foot.

The Honorable Richard Blanchard entered an Order selecting Dr. as a treating physician in the workers' compensation case. Dr. examined the patient on December 11, 2006, and his report is of record. Based upon the claimant's signs and symptoms, Dr. ordered an MRI and ordered medications for pain and muscle spasms.

Physical examination on December 11, 2006, revealed: weight 326 pounds, height 5'9", BP 132/90. Examination of the lumbar spine reveals moderate tenderness, limitation of motion, as well as positive straight leg raising.

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A medical summary of treatment is included herein. The claimant presently is still under treatment by the treating physician, M.D.

MEDICAL SUMMARY

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DOCUMENTS
Form 2- None

5/22/07 **AMENDED FORM 3**: PSYCH OVERLAY

Wages Records

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11/26/07 **Dr.**
Follow-up appt w/an updated MRI Scan. Clmt has an L-4-5 right par median disc protrusion w/disc desiccation at L-4-5 and L-5, S-1. Clmt was unable to locate his lumbar myelogram and contrast CT scan, which reportedly show the pars defects at L-5 w/ a Grade I spondylolisthesis at L-5, S-1. Dr. has again assessed Clmt's body habitus and his current weight of still being over 350 lbs and thinks that it would be in the Clmt's best interest to not undergo surgery at this time due to his size. Dr. advised the Clmt that if he could get to 300 lbs or less then Dr. would reconsider. Meanwhile, Dr. is recommending that the Clmt undergo a FCE for permanent restrictions.

11/7/07 **Dr.**
Follow-up appt...Dr. recommends surgery, but Clmt needs to lose about 50 lbs. Clmt doing same, back is still painful. Needs refill of Percocet. Gave Rx of Percodent 5/325 #90 3xday, no refill; and another Rx for Percodan 5/325 #90 3xday, not to be filled until 12-7-07. Will see back after first of year for follow-up and hopefully Clmt will have lost some of the weight that he needs to lose before Dr. does surgery.

11/5/07 **Dr.**
Took history of incident...Per Dr. , surgery is an option, but due to Clmt's obesity, not feasible at this time. Dr. took x-rays of lumbar spine, but results are less than optimal due to Clmt's body habitus and failure for the beam to penetrate the Clmt's body weight sufficiently, although Dr. could detect the presence of Grade I spondylotic spondylolisthesis. Dr. noted that Clmt's MRI was done nearly a year ago and the myelogram and CT Scan were not at this appointment for his review. Dr. recommends an updated high resolution MRI, Clmt will retrieve his myelogram and CT Scan and bring them in after the HR/MRI for Dr. 's review. Feels that Clmt's problem could be treated

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surgically in normal weight people, but shares Dr. 's concerns about proceeding to surgery in a patient this size. Dr. will review the recommended studies and go over the Clmt's risks/potential options before making a final determination...Clmt needs to avoid any repetitive bending, twisting or lifting greater than 10 lbs and needs to alternate between sitting and standing at his discretion.

10/8/07 **Dr.**

Follow up herniated disc... need his Percasits refilled... they are current... the court apparently appointed either Dr. or Dr. and he has his appt. November 5... no marked distress... blood pressure 130/86... normal gate... persistent tenderness in the low back... leg raises positive on the right.

9/19/07 Dr.

1. Weight reduction surgery most likely will need to be necessary procedure in order to get this gentleman back to where he can return to the work force. In dealing with this type of individual you have to treat the whole person as opposed to just the spine and ignore the rest of the individual.
2. If Dr. or Dr. feels that they are "capable of" the challenge... I would not have any problems referring Mr. to these physicians.
3. No further surgery is perused by the patient:
   A. left CE should be done before MMI
   B. vocational evaluation should be obtained
   C. medication management for pain and limitations should occur
   D. it should be long term pain management
4. A neuropsyc Eval is not necessary this man is currently on Effexor and is doing better regarding his depression
5. This gentleman remains TTD

9/14/07 Dr.

Follow up medication management low back... I am seeing him until the court decides what to do with regard his morbid obesity and disc herniation... I have not seen [redacted] nce March... He ran out of medications and is seeing his PCP Dr. ... present time pain level is 10/10... It will go down to a 7 if he is very inactive today [redacted] moves reasonably well... blood pressure 136/98... [redacted] medications are altered today... Celebrex, Zanaflex, Percasits, Effexor... for depression and mood... refillable 3x follow up one month

9/6/07 Dr.

Response to ct. questions:

1. I cannot state whether he should undergo a gastric bypass surgery... ask a bar iatric surgeon.
2. It is my opinion he has an aggravation of pre-existing injury: grade I L5/S1 spondylolisthesis and bilateral pars defect. As concerns to whether or not the right L4/5 disc protrusion is work related I presume that to be so.

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Unfortunately one cannot be treated without treating the other so as a result the suggested surgery is most likely the result of the injury on 8/22/06.

3. Unless [redacted] could realize substantial weight loss... 100+ lbs. It would not be worth while to do surgery nor would I consider it because of the risks associated... whether he had a gastric stapling or not. In addition if he were to loose that amount of weight, as he is only 24 years of age, he might avoid surgery altogether.

6/25/07 **Dr.**

received report from Dr. ... concerning [redacted] and a letter form Ms. for the need for ongoing medical management. As you are aware the patient is morbidly obese and based on his morbid obesity and findings of milligrams, CT and MRI, Dr. did not feel surgery is warranted until the patient could undergo weight reduction measures which would include gastric bypass procedure... I have been asked by Ms. if I would be willing to revive this medication management until he has lost the weight he needs in order for Dr. to proceed w/ some type of surgical intervention.

Based on these circumstances I will be able to continue medical maintenance on this individual if the court so desires...however, he is such a young individual w/ some type of resolution will need to be obtained w/in the reasonable period of time.

6/04/07 **Dr.**

apparently [redacted] is having significant problems from an emotional standpoint, not just from his back and leg pain...

X-rays: lumbar milligram and CT and MRI...I don't find a significant disc herniation that might be helped by a more simple procedure such as a right L4/5 diskectomy.

Recommendations: it is my opinion that diskectomy above the level of the spondylosis is usually not helpful...in this case w/o more over whelming findings, surgery would be a set up for failure...his morbid obesity prevents him an ideal milligram and CT scan, but there is enough resolution combined w/ the MRI to make what I believe is a sound medical decision.

Regard to his emotional health, I received a letter from attorney [redacted] directing him to apparently free psychiatric clinics, b/c of significant depression. It is my opinion, this is a secondary dx related to his overall condition and he may benefit from neuropsychological evaluation and counseling. None the less, my opinion remains the same that his morbid obesity prevents any reasonable successful surgery based on his diagnostic findings....unless [redacted] is unable to achieve significant weight reduction he would not be a surgical candidate and the risk would far out weigh any benefits.

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Therefore it is my opinion at the present time he can be released from my care having reached MMI from a neurosurgical standpoint....

Work restrictions: permanent 10lb weight limit, w/ 10lb pushing/pulling as noted on my May 10, 2005 form 5.

5/11/07 **Dr.**
Form 5- released to modified work...restricting lifting 10lbs, push/pull10lbs...continuing med tx yes.

4/19/07 **Dr.**
f/u of his low back and right hip injury...has seen Dr. , and feels like he is a surgical candidate and has scheduled a myelogram CT for him on 4/25/07....Dr. is going to follow up again w/ him on the May 10th....

Today, [redacted] state he is about the same.....still has numbness in his leg and he states his medications are getting low.

Today, [redacted] moves about reasonably well....still has persistent pain in his low back on the right and straight leg raising is still positive on the right....

It is my opinion at this time that the patient is in need of ongoing medical care per the direction of Dr. ...I will not give him a return appointment....he has been advised to get his medications and refilled and they are refillable x2....we will not need to see him back unless so directed by the Court.

4/12/07 **Dr.**
Form 5- TTD until myelogram

4/12/07 **Dr.**
f/u...had pt....offered some minor improvement, and the first ESI was beneficial but the second was not....cx of back and right leg pain that has remained persistent and severe....he rates the pain as 10 out of 10....has subjective weakness in the right leg, as the leg will sometimes buckle and give away w/ walking.

Impression
1. Right L4/5 disc herniation and bilateral L4/5 pars defects w/ probable complete defect on the left at L5....only a minimal grade 1, L5/S1 spondylolisthesis
2. Degenerative L4/5, L5/S1 disc disease

Recommendations
1. He is in need of a lumbar myelogram and CT scan w/ flexion and extension films.

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2. Either require a right L4/5 hemilaminectomy and diskectomy or an L4/5, L5/S1 TLIF and L4 to sacral fusion w/ instrumentation....according to [redacted] his sx are severe and have not improved...might be possible just to consider an L4/5 diskectomy as he has primarily back and right-leg pain....myelogram and CT scan will be very beneficial, particularly in regard to the L5 segment.

Work status: I don't think he can realistically work under his current medical conditions and should remain TTD until the lumbar myelogram and CT scan is performed and a f/u appointment will be made afterwards.

4/04/07 **Dr.**
Form 5- modified work....continue med tx.....

4/04/07 **Dr. S**
PROCEDURE REPORT
Dx
1. Lumbar disc displacement

Name of Procedure: lumbar ESI #2 at L4/5.

AP and lateral x-ray showed needle placement in the L4/5 position w/ contrast in the epidural space, not to be intravascular or intrathecal.

Plan: f/u.

2/22/07 **Dr.**
patient is to be seen by Dr. ...thought he should undergo initial conservative management...series of ESI's and pt for 12 visits....patient still having back pain that radiates in right hip and leg...he states standing, walking, stooping, bending and twisting makes symptoms worse.

F/u Dr. ...continue medications Tramadol and Flexeril...f/u one month.

Rx: shower chair

2/15/07 **Dr.**
...constant aching, throbbing, burning and tingling sensation that will awaken him at night....pain is 10/10...aggravated w/ most activities, particularly walking and somewhat improved w/ sedentary activities....subjective weakness of the right leg....trouble w/ walking b/c of the right leg wants to buckle and give out...urinary frequency is associated....pain extends down to the right foot w/ numbness of all toes and the right foot.

MRI 12/15/06 negative right hips.

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MRI lumbar spine- paracentral right protrusion w/ subarticular protrusion at L4/5 and central L5/S1 disc herniation....appears to be a near complete pars defect at L5 on the left....

Dx

1. right paracentral L5 disc herniation and central L5/S1 disc herniation that appears to be secondary to work related injury....
2. bilateral pars defect w/ almost a complete deficit at L5 on the left, but no spondylolisthesis
3. degenerative L4/5, L5/S1 disc disease.

Rx

1. pt comprehends of program...
2. trial ESI
3. f/u 8wks....alternative surgical solutions would be a right L4/5 diskectomy or an L4/5, L5/S1 PLIF infusion w/ instrumentation...hx w/ these patients w/ ruptured disc above L5/S1 w/ pars defect often do poorly....diskectomy seems to aggravate the spondylolisthesis below and creates back pain postoperatively w/ less than ideal recovery. That is still an option as the alternative at L4/5, L5/S1 PLIF infusion w/ instrumentation.
4. he understands his condition....

Restrictions: TTD by my observation of his ambulation....i don't think there is really realistic that he can do and could certainly put himself or fellow employees in harms way

2/15/07 **Dr. [illegible] FORM 5**

TTD....

Recommend: L-ESI, and pt 12 visits....continuing treatment

1/03/07 **Dr. J [illegible]**

MRI of the right hip was unrevealing....MRI of lumbar spine was significant and he has a right paracentral and subarticular disc protrusion at L4/5 that could effect the transferring L5 nerve root as well as the exiting L4 nerve root in this area....small disk protrusion w/ associated DDD....pars interaricularis thinning bilaterally w/ a near complete defect at L5 on the left....positive SLR at 60 degrees...

My opinion the patient has a disk herniation at L4/5 on the right representing a permanent anatomical abnormality and is need of further medical care....i recommend that he be seen by neurosurgeons in Dr. [redacted] group....TTD and need of medical care....Rx: Flexeril and Tramadol.

****

2006

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12/15/06 MRI / hips

1. negative
2. DDD at L4/5 and L5/S1

12/15/06 MRI / Lumbar Spine

1. Disc protrusion L4/5… mild DDD… could be traversing L5 nerve right as well as exiting L4 nerve root
2. Small central disc protrusion L5/S1 with moderate DDD
3. Bilateral parse… thinning with near complete defect at L5 on the left
4. Moderate congenital spinal canal stenosis
5. Normal… muscles bilateral

12/14/06 Deposition of [redacted]

12/11/06 Dr. [redacted]

1. patient needs further medical care.
2. possibly sustained a labrial injury to right hip.
3. Rx: MRI lumbar spine and right hip
4. medications Celebrex, Zanaflex
5. f/u
6. TTD at this time and has been since September 5, 2006

9/7/06 [redacted]

23 y/o who has an on-the-job injury on August 22….hurt his back and he has been working w/[redacted] went back to work yesterday and they said he should not have any more pain or problems and not he is having some problems after he started going back to work yesterday….no numbness or tingling….no incontinence….pain starts in his hips and goes down all the way through his leg…denies any new trauma. He is taking some medications for his leg….but he does not know what they are and he is really almost out of them.

Dx:

1. on the job injury
2. sciatica

He was taken to the exam room and interviewed….I will place him on Flexeril, prednisone and Lortab…f/u w/ Concentra in the next 2-3 days….stable and discharged….

9/7/06 [redacted]

[redacted] was discharged to go home…should be able to rtw after released by the doctor.

Limitations

1. slowly return to you usual activities

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2. avoid lifting, pushing, or pulling
3. avoid sitting for long periods
4. do your back exercises regularly
5. keep f/u appointment
6. take meds

9/05/06 [redacted]

injured 8/22/06 right leg and hip using walk behind lawn mower and it slipped and I tried to brace myself…patient has not been working b/c he chose not to work…he feels a pattern of sx is about the same…he states does want to get back to regular duty.

Physical exam: palpation is positive for pain at the laterally on the right.

Dx: hip strain

Activity status: regular activity released from care today…return to clinic as needed. Patient will reach MMI in about 1wk according to the guideline 0% PPD.

9/05/06 [redacted] **Dr.** [redacted]

released from care….return to regular duty 9/5/06

Dx: sprain of unspecified site of hip and thigh

9/05/06 [redacted]

Recheck list: right leg and hip….right hip and right leg lots of pain.

9/05/06 [redacted]

23 y/o male employee of [redacted]..cx about his leg which was leg which was injured 8/22/06…

Patient states: :injured right leg and hip using a walk behind lawn mower and it slipped and I tried to brace myself."

Hx: has not been working b/c he chose not to work;…feels the pattern of sx is about the same….he states he does want to get back to regular duty.

Assessment: hip strain

Plan: medications….regular activity release from my care today….f/u as needed.'

Notes: patient will reach MMI in about 1 week.

8/30/06 **Concentra**

recheck hip…patient states that is doing better.

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8/30/06 [redacted]
23 y/o male employee of [redacted] who cx about his leg was injured 8/22/06

Hx: patient has been working their regular duty....feels the pattern of sx is improving and feels better....patient has had pt 3 times.

Exam: palpation is negative for pain

Assessment: hip strain

Plan: medications....regular activity not released from my care.

8/30/06 [redacted]
just woke up so it is not irritated

8/30/06 [redacted] (Dr. [redacted]
Dx: sprain of unspecified site of hip and thigh

Returning for following visit....return to regular duty 8/30/06

829/06 [redacted]
a little better today....pain is 5/10....tenderness remains late....

8/28/06 [redacted]
patient states he ? right hp while pushing a mower and slipped.

8/28//06 [redacted]
23 y/o male injured leg 8/22/06...."using walk behind lawn mower and it slipped and I tried to brace myself and injured right leg and hip".

Returns for recheck...working regular duty....pattern of symptoms is worsening....continues to have pain in his right hip that radiates down his right leg.

Exam: palpation is positive for pain at the area of the greater trochanteric and laterally over the tensor fascia lata.

Assessment: hip strain

Plan: medication, pt

Work status: regular activity

8/24/06 [redacted]
X-RAY RIGHT HIP

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Exam shows no fracture, dislocation or acute boney abnormality.

Impression: negative right hip

8/23/06 [redacted]

23 y/o male employees of [redacted]

Hx: cx of pain in his right hip that radiates down is right lateral thigh, onset yesterday when he fell at work…denies any back pain, numbness or tingling..

X-ray: hip x-ray….no fracture seen.

Palpation at the hip is positive for pain at the greater trochanteric….

Assessment: hip strain
Plan: patient was instructed to elevate the extremity and to apply ice intermittently OTC medications.

Activity status: regular activity not released from care.

f/u….it is my opinion that the above injury and/or symptoms are more likely than not to be directly related to work activities.

8/22/06 [redacted]

patient was mowing on a slope (push mower) had to strain to keep mower from slipping and felt a pop in his leg….pain in hip and thigh….pain is up when prolonged walking…

Assessment: patient to pt….pain and tingling in his toes.

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2004
12/20/04 [redacted]

21 y/o employee of [redacted] bout his eye which was injured 12/20/04.

Patient states: "saw dust in left eye"…

Hx: patient states he was putting something above his head….had saw dust on it which blew into his face and got into his eye….hurt so badly gave him a headache.

Assessment:
1. conjunctival foreign body
2. corneal abrasion

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Plan: meds, regular activity not released from care....f/u:

CURRENT MEDICATIONS:

Tramadol 50 mg
Flexeril
Percocet 5 mg.
Celebrex 200 mg.
Effexor 75 mg.
Zanaflex q day to BID
Hypertension medication

FIVE STEP SEQUENTIAL DISABILITY EVALUATION:

Under the Five Step Sequential Disability Evaluation Process described in 20 C.F.R. Section 404.1520, the claimant has met the burden of proof as follows:

1. **That the claimant has not engaged in any "substantial gainful activity" (SGA) since 8/22/06.**

2. **The claimant has a "severe medically determinable impairment" to wit:**

   Patient has a right paracentral and subarticular disc protrusion at L4-5 and it was felt by the radiologist that this disc protrusion could affect the transferring L5 nerve root as well as the exiting L4 nerve root in this area. He was also noted to have a small central disc protrusion at L5-S1 with associated degenerative disc disease. He was also found to have pars interarticularis thinning bilaterally with a near complete defect at L5 on the left.

   [redacted] M.D.
   January 3, 2007

   Obesity: Weight 350 pounds, Height 5'9"
   Hypertension
   Depression

3. **These impairments meet or equal one of more of the impairments described in Social Security Regulations and the Listings of Impairment, to wit:**

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1.04 *Disorders of the spine* (e.g. herniated nucleus pulposus, spinal stenosis, degenerative disk disease, resulting in compromise of a nerve root with:

A. Evidence of nerve root compression confirmed by MRI, pain, limitation of motion of the spine, muscle weakness accompanied by sensory loss with positive straight leg raising test (sitting and supine)

4. The claimant can not do past relevant work:

The claimant's past relevant work is grounds maintenance and landscaping, which required occasional lifting of 50 pounds and frequent lifting of 25 pounds, with standing, walking, lifting, stooping, bending, kneeling, crouching, climbing, repetitive twisting.

Notice of Reconsideration dated October 3, 2007:

"You said that you were unable to work because of back pain that affects the right leg.
The medical evidence shows the following: Although you are experiencing pain in your back, you are able to sit, stand, bend, and walk well enough to do some types of work. Medical evidence does not show any other impairments which keep you from working.

Your condition prevents you from doing your past work, but it does not prevent you from doing other work which is less demanding."

THE GRIDS:

Residual Functional Capacity: Maximum sustained work capacity is limited to sedentary work as a result of severe medically determinable impairments:

201.27 Younger individual, age 24, born [redacted] high school graduate with limited education, unskilled or none.

The GRIDS are of no assistance in resolving this case.

EXERTIONAL LIMITATIONS:

The claimant weighs 350 pounds, is 5'9", has difficulty going from a sitting position to a standing position, has marked antalgic gait and tends to favor his left leg as any weight bearing on the right leg is painful. The patient has limitations of sitting for 30 minutes, standing for 30 minutes, with inability to

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lift anything over 25 pounds, with no bending, stooping, kneeling, crouching, crawling. Sit, stand, walk less than 2 hours out of an 8 hour day.

NON-EXERTIONAL LIMITATIONS:

Constant pain, relieved only with narcotic medication, with the need to get off his feet and lie down due to constant pain and muscle spasms, and situational depression.

5. **Other work in the national economy within the limitations:**

Residual functional capacity is the claimant's maximum remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis. A "regular and continuing basis" means 8 hours per day for 5 days a week or an equivalent work schedule. Social Security Ruling 96-8p. The claimant must have both the mental and physical abilities to perform sustained work activities. Because the evidence supports a finding that the claimant has had a substantial loss of ability to meet the demands of basic work related activities on a sustained basis, the unskilled sedentary occupational base is significantly eroded and a finding of disabled is justified under Social Security Ruling 96-9p. The claimant is disabled within the meaning of the Social Security Act and Regulations.

Therefore, based upon the claimant's residual functional capacity, based upon the claimant's age, education and work experience, superimposing the limitations caused by the severe medially determinable impairments, there are no jobs within the national economy that the claimant can perform on a regular basis within the limitations imposed and, therefore, is entitled to a finding by this United States Administrative Law Judge of **"disabled."**

Various physicians, treating and non-treating, have written that the claimant suffered from various medical problems and that the claimant has significant work restrictions. While the finding that a person is "disabled" under the provisions of the Social Security Act is an issue reserved to the Commissionerl (SSR 96-5pl), opinions from any medical source on issues reserved to the Commissioner must never be ignored. The adjudicator is required to evaluate all evidence in the case record that may have a bearing on the determination or decision of disability, including opinions from medical sources about issues reserved to the Commissioner. If the case record contains an opinion from a medical source on an issue reserved to the Commissioner, the adjudicator must evaluate all the evidence in the case record to determine the extent to which the opinion is supported by the record.

The fact that the claimant's treating physician, after extensive examinations and treatment, has formed such opinion as to the claimant's ability to perform sustained work activity was precluded strongly suggests a significantly limited residual functional capacity. Further, considering the claimant's diagnoses and multitude of prescribed medications tried, the

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undersigned finds that treating physician's opinion is well support and is not inconsistent with the other substantial evidence in the case record; thus, it is afforded controlling weight (20 CFR 404.1527(d)(2) and SSR 96-2p).

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairment(s) could reasonably be expected to produce the alleged symptoms, and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The State agency medical opinions are given little weight because other medical opinions are more consistent with the record as a whole and evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants. Furthermore, the State agency consultants did not adequately consider the claimant's subjective complaints or the combined effect of the claimant's impairments. The Administrative Law Judge affords greater weight to the opinion of the examining (nontreating) source. This opinion is well supported by medically acceptable clinical and laboratory findings, and is consistent with the record when viewed in its entirety. The State agency consultants did not consider all of the claimant's impairments contained in the medical evidence of the record. The State agency consultants failed to consider the combined effect of all of the claimant's impairments as required by the regulations. The State agency did not adequately consider the entire record, including the statements of collateral sources. The State agency did not adequately consider the entire record, including the subjective complaints and other allegations of the claimant.

5. The claimant is unable to perform any past relevant work (20 CFR 404.1565 and 416.965).

The demands of the claimant's past relevant work exceed the residual functional capacity.

6. The claimant was a younger individual age 18-44 on the established disability onset date (20 CFR 404.1563 and 416.963).

7. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564 and 416.964).

8. The claimant's acquired job skills do not transfer to other occupations within the residual functional capacity defined above (20 CFR 404.1568 and 416.968).

9. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c), 404.1566, 416.960(c), and 416.966).

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In determining whether a successful adjustment to other work can be made, the undersigned must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11). When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decision-making unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If the claimant has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decision-making (SSR 85-15).

If the claimant had the residual functional capacity to perform the full range of sedentary work, considering the claimant's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.28. However, the additional limitations so narrow the range of work the claimant might otherwise perform that a finding of "disabled" is appropriate under the framework of this rule.

10. The claimant has been under a disability, as defined in the Social Security Act, from August 22, 2006 through the date of this decision (20 CFR 404.1520(g) and 416.920(g)).

DECISION

Based on the application for a period of disability and disability insurance benefits filed on June 12, 2007, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act beginning on August 22, 2006.

Based on the application for supplemental security income filed on June 12, 2007, the claimant has been disabled under section 1614(a)(3)(A) of the Social Security Act beginning on August 22, 2006.

The component of the Social Security Administration responsible for authorizing supplemental security income will advise the claimant regarding the nondisability requirements for these payments, and if eligible, the amount and the months for which payment will be made.

Medical improvement is expected with appropriate treatment. Consequently, a continuing disability review is recommended in 12 months.

Workers' Compensation offset may be applicable.

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W. Howard O'Bryan, Jr. (0453)
United States of America
[10]Administrative Law Judge
Federal Administrative Judiciary

Date DEC 0 4 2007

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10 **W. Howard O'Bryan, Jr., (0453), United States Administrative Law Judge,** Social Security Administration, Office of Adjudication and Review. Who may preside: 5 USC 556(b); Powers of the presiding officer: 5 USC 556(c); Special role of the Administrative Law Judge in Social Security: Heckler v. Campbell, 461 U.S. 458, 471, 103 S.Ct. 1952, 1959, 1 S.S.R.S. 3, 10, CCH ¶ 14,585 (1983);Dixon v. Heckler, 811 F.2d 506, 510, 16 S.S.R.S. 279, 283 (10th Cir. 1987) James v. Bowen, 793 F.2d 702, 704-705, 14 S.S.R.S. 87, 89-90, CCH ¶ 17,071 (5th Cir. 1986), Cannon v. Harris, 651 F.2d 513 (7th Cir. 1981); Cutler v. Weinberger, 527 F.2d 224 (3rd Cir. 1975) (Administrative Law Judge must develop full record where claimant not represented by counsel); But see, Kane v. Heckler, 731 F.2d 1216, 4 S.S.R.S. 340, CCH ¶ 15,324 (5th Cir. 1984), Dozier v. Heckler, 754 F.2d 274 (8th Cir. 1985); Jordan v. Heckler, 835 F.2d 1314, 20 S.S.R.S. 158, CCH ¶ 17,808 (10th Cir. 1987), (Administrative Law Judge must develop full record even if claimant represented by counsel); Social Security Ruling 71-23; Social Security Regulations 20 CFR §§ 404.944 and 416.1444, see also, 20 CFR 404.950, 404.951, 416.1450 and 416.1451; Social Security Act, §§ 305(b) and 1631(c)(1).

EXHIBIT NO. 6F
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VIRGINIA DEPARTMENT OF REHABILITATIVE SERVICES

TELEDICTATION

MEDICAL CONSULTANT REPORT

R

CURRENT DATE: 10/29/2008

DATE EXAMINED: 10/24/2008
DATE DICTATED: 10/28/2008
TYPE OF CLAIM:
AUTH #:
REGION: 4

CHIEF SYMPTOMS:

Neck pain, low back pain and shortness of breath.

HISTORY OF PRESENT ILLNESS:

The claimant is a 53-year-old female with a past medical history of COPD, history of motor vehicle accident five years ago, low back pain, neck pain and pain in the knees came for evaluation of Disability Determination Services.

As per the claimant, her main symptoms are neck pain which has been present for the last several years, getting worse and worse. The claimant rates her pain as 8/10, occasionally radiates to the hands. Any kind of movement from side to side exacerbates the pain. She sees D as an outpatient, who is a family care physician. She has never had x-rays or an MRI scan or myelogram for the neck pain, although she had been sent to physical therapy once in the past which did not help her neck pain. The claimant was never referred to a specialist in the past for her neck pain.

Also, the claimant complains of low back pain and hip pain at times. The pain becomes worse on bending, stooping, crouching, crawling and lifting weights more than 20 pounds. Also, she never had an x-ray of MRI scan for the back to suggest

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RE: [redacted]
SSN: [redacted]

the pathology of the back pain. She has never been sent to a specialist for her back pain.

The claimant describes having a motor vehicle accident in the past, five years ago, with fracture of the left hip. She does not use a cane, walker or crutches for ambulation.

She also has shortness of breath, mostly on exertion. She has never had an MRI scan or x-ray in the past.

The claimant also complains of pain in her right hip joint and pain all over. She has never worked in the past.

REVIEW OF SYSTEMS:

No fevers, chills or rigors. No headaches. No change in vision. Negative for tinnitus or hearing loss. Negative for sore throat. No odynophagia. No neck mass. No for chest pain. Positive for shortness of breath on exertion. No palpitations. Negative for pain in the abdomen. No nausea, vomiting, diarrhea or constipation. Negative for burning or pain in the urine. No hematuria. No dizziness. No loss of consciousness. No seizures. Positive for neck pain. Positive for low back pain. No depression or anxiety. Positive for pain in the knees.

PAST MEDICAL SURGICAL HISTORY:

1. COPD.
2. Gallbladder surgery in the past.
3. Motor vehicle accident five years ago with left hip fracture, status post repair.
4. Low back pain.
5. Neck pain.
6. Pain in the knees.
7. Hysterectomy in the past.

ALLERGIES:

No known drug allergies.

SOCIAL HISTORY:

The claimant smokes one pack a day. No alcohol. No illicit or intravenous drug abuse.

MEDICATIONS:

1. Lisinopril
2. Hydrochlorothiazide 20/12.5 mg, one table q. daily.
3. Advair Disk 250/50, one puff b.i.d.
4. Rosuvastatin 20 mg q.d.
5. Spiriva HandiHaler, one puff in the morning.
6. Hydrocodone 5/500, q.4h., as needed.

PHYSICAL EXAMINATION:

The claimant being examined was not in any acute distress, lying conscious and comfortable.

VITAL SIGNS: Respirations are 80. Temperature 98.5. Pulse 70. Blood pressure is 120/70. Height 5 feet 4 inches. Weight 134 pounds. Vision 20/20

GENERAL: The claimant was pleasant and cooperative, not in any acute distress.

GROSS AND FINE MANIPULATIONS: The claimant can climb on the examination table with no difficulty. Grasp and shake hand strength was normal. The claimant can pick up a coin from a flat surface with no difficulty.

VISION AND HEARING: Vision was 20/20 bilaterally. A formal hearing test was not done but seems grossly intact.

EARS AND EYES: PERRLA. EOMI.

NECK: No lymphadenopathy. No jugular venous pulse. No thyromegaly.

HEART: Rate is regular. No murmur. No S3. No S4.

LUNGS: Clear to auscultation but air entry is decreased. Expiratory phase was prolonged. No rhonchi. No wheezing.

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[redacted]

ABDOMEN: Soft. Nontender. No organomegaly. Bowel sounds are present.

SPINE: Mobility and curvature normal. No kyphosis or scoliosis.

EXTREMITIES: No cyanosis, clubbing or edema. Peripheral pulses felt.

NEUROLOGIC: Alert and oriented. Cranial nerves II-XII are intact.

MOTOR EXAMINATION: Power was 5/5.

SENSORY EXAMINATION: Intact.

CEREBELLAR: No cerebellar signs.

MENTAL STATUS: The claimant's appearance, behavior and speech were normal. Thought process and content were normal. Concentration and attention were normal. Judgment and insight were normal. Attitude and degree of cooperation was normal. Fund of information seems adequate.

DIAGNOSES:

1. Neck pain.
2. Low back pain.
3. Chronic obstructive pulmonary disease (COPD).
4. Motor vehicle accident five years ago with left hip fracture, status post repair.
5. Gallbladder surgery in the past.
6. Pain in the knees.
7. Hysterectomy.

PROGNOSIS:

1. The claimant's main symptoms are pain in the neck and low back pain.
2. Her range of motion on physical examination was normal, although the claimant has mild neck tenderness.
3. On examination, the claimant can do normal flexion/extension of the lumbosacral spine and her gross and fine manipulations were normal.
4. The claimant does not use a cane, walker or crutches for ambulation, although she had a history of hip fracture, but at this point in time her pain is in the right hip which was not involved in the car accident.

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5. It is possible that the claimant has degenerative arthritis, as per her age, but she does not demonstrate any significant abnormality to restrict her activity.

FUNCTIONAL INFORMATION:

The claimant was cooperative and gave full effort during the examination. The number of hours the claimant could be expected to sit, stand and walk will be 6-7 hours with normal breaks. No limitations in bending, stooping, crouching, or crawling. No limitations in reaching, handing, fingering or grasping. No relevant visual, communicative, workplace or environmental limitations.

MEDICAL SOURCE STATEMENT:

With no limitations.

CREDIBILITY:

Credibility of the report is moderate.

This transcription was made from a recording of the voice of F by Superior/It on 10/29/2008.

DuPlEx
Social Security Administration
Retirement, Survivors, and Disability Insurance
Notice of Disapproved Claim

Date: October 31, 2008

We are writing about your claim for Social Security disability benefits. Based on a review of your health problems you do not qualify for benefits on this claim. This is because you are not disabled under our rules.

We have enclosed information about the disability rules.

About The Decision

Doctors and other trained staff looked at your case and made this decision. They work for your State but used our rules.

Please remember that there are many types of disability programs, both government and private, which use different rules. A person may be receiving benefits under another program and still not be entitled under our rules. This may be true in your case.

How We Made The Decision

All relevant reports were requested and the following evidence was used to decide your claim.

report received 08/20/2008
, LLC report received 09/24/2008
L report received 08/27/2008
L RESPIRATORY report received 10/28/2008
report received 10/29/2008
information submitted by you

We have determined that your condition is not severe enough to keep you from working. We considered the medical and other information, your age, education, training, and work experience in determining how your condition affects your ability to work.

You said that you are unable to work because of breathing problems, back problems, limited education, migraine headaches, vision problems, hypertension.

The evidence shows that you have pain in your back, but you are still able to sit, stand, walk and move about within an adequate range without assistance. You have breathing problems, but a recent breathing study has shown that you retain a sufficient ability to breathe. There are many jobs in the economy that do not require much education. Migraines are very bothersome, but generally respond well to treatment and medication. There is no evidence that you have significant difficulty with vision. Your hypertension has not caused you any severe complications.

Although you have not worked in the past, you should be able to do work that does not require heavy lifting or expose you to dust or fumes.

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The last day of your specified 7-year period is 01/2015.

If your condition gets worse and keeps you from working, write, call or visit any Social Security office about filing another application.

If You Disagree With The Decision

If you disagree with this decision, you have the right to appeal. We will review your case and consider any new facts you have. A person who did not make the first decision will decide your case.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.
- You have to ask for an appeal in writing. We will ask you to complete a form SSA-561-U2, called. "Request for Reconsideration". You may contact one of our offices or call 1-800-772-1213 to request this form. Or you may complete this form online at http://www.socialsecurity.gov/disability/appeal. Contact one of our offices if you want help.
- In addition, you should complete a "Disability Report - Appeal" to tell us about your medical condition since you filed your claim. You may contact one of our offices or call 1-800-772-1213 to request this form. Or, you may complete this report online after you complete the online Request for Reconsideration.

Please read the enclosed pamphlet, "Your Right to Question the Decision Made on Your Social Security Claim." It contains more information about the appeal.

New Application

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with this decision and you file a new application instead of appealing:

- you might lose some benefits, or not qualify for any benefits, and
- we could deny the new application using this decision, if the facts and issues are the same.

So, if you disagree with this decision, you should ask for an appeal within 60 days.

If You Want Help With Your Appeal

You can have a friend, lawyer, or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due Social Security benefits to pay toward the fee.

Other Benefits

Based on the application you filed, you are not entitled to any other benefits, besides those you may already be getting. In the future, if you think you may be entitled to other benefits you will need to apply again.

[redacted] [redacted]

If You Have Any Questions

If you have any questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at the number shown below. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

SSA - BLUEFIELD
3014 E CUMBERLAND RD
BLUEFIELD, WV 24701

304-327-7671

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly.

Laurie Watkins
Regional Commissioner

Enclosures:
SSA Pub. No. 05-10058
Disability Rules Factsheet

[redacted]

Licensed Clinical Psychologist

Report of Psychological Evaluation

CONFIDENTIAL: FOR PROFESSIONAL USE ONLY

Name: [redacted]
Date of Birth [redacted]
Date of Evaluation: 9-27-10

SS# [redacted]
Age: 55
Length of evaluation: 3 hours

Reason for Referral: [redacted] was referred by her attorney, L. [redacted] for a psychological evaluation in connection with her claim for disability benefits. Records provided for review include Lab Report from [redacted] Hospoital, 9-17-09; Discharge Summary, [redacted] Hospital, 5-8-09; Consultation report, [redacted], 5-7-09; school records, [redacted].

Identifying Information: [redacted] is a 55 year-old white woman. She is driven to the evaluation by her pastor and she asks him to be present through the interview and he agrees. They drove to the area yesterday and stayed last night with his sister. She is not able to state the route they used and says they had a little trouble finding this location. Asked if she understands why she is here, [redacted] says that her attorney wanted her to come. She completes intake forms without assistance, bending low over the forms to write. She says, "I can't read much." Limits of confidentiality are discussed and she is told that the appointment today is for evaluation only and that it is not intended as treatment. She is also told that the purpose is to determine the effects of any mental impairment on her his ability to sustain gainful employment, and that the results could be favorable or unfavorable.

Medical History: [redacted] says she has a history of breathing problems, high blood pressure and back pain for 7 or 8 years because of a bad disc. She broke her hip in a motor vehicle accident 6 or 7 years ago and says she also crushed her pelvis and broke ribs. She was hospitalized overnight about 2 weeks ago because of chest pain, and says this has happened before. She has had surgery for her gall bladder and also had a hysterectomy. Medical records state that she also has a history of osteoporosis, rheumatic fever and COPD. She had a work-up in May of 2009 because of severe headaches on the right side. Her SED rate was elevated and doctors tried to rule out arteritis, inflammation of arteries in the brain or head. She seems not to know what the final diagnosis was, and it may be that studies have not yet been conducted.

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She brings the following list of medications from [redacted] Hospital Discharge/Transfer Instructions, 9-13-10: Advair inhaler 250/50 mg 1 puff x2, Metoprolol 50 mg, Prilosec 20 mg, aspirin 81 mg, Plavix 75 mg, Lortab 7.5 mg every 4 hrs, Ibuprofen 800 mg every 8 hrs, Lisinopril/HCTZ 20/12.5 mg, Paxil 10 mg, Prednisone 60 mg, Spiriva 18 mcq. She says she sometimes forgets to take her medication. Asked about side effects, she says, "I keep a headache all the time," and she also has a dry mouth. She says she lost her Medicaid card in July and when her current supply of medicine runs out, she will not be able to get more.

Psychiatric History [redacted] says she has "always been a worrier" but her nerves got worse in 2002 or 03 when her husband became ill. She saw a counselor, (one time in Vansant and says she was not sure the counselor intended her to return so she did not make another appointment. She was also not sure that it would help. She has never been psychiatrically hospitalized or made a suicide attempt. She thinks she began using medication for her nerves about 2 years ago. Family psychiatric history includes "Mommy, she takes medicine for depression."

Asked what her usual mood is, she says, "I'd like to say a good one, pretty fair." Asked if she ever feels depressed, she says yes and rates her level of depression today as 4 on a 10-point scale. She has not had crying spells for a while and says her appetite is variable. She has lost weight and does not know how much but says she can tell in her clothes. She has trouble sleeping and awakens often because of pain and also because of her thoughts. She says she never wakes up without a headache. She has lost interest in things she used to enjoy like working in her flowers and mowing the lawn. She says she stopped doing those things 5 or 6 years ago. She denies feelings of guilt and suicidal ideation ("as of right now, I don't think I would never"). She does not give any history of manic or hypomanic episodes.

[redacted] says she feels anxious when she must travel or meet new people. She does not like to be in crowds and says, "I don't visit Wal-Mart." She rates her anxiety today as "5, maybe 7" and says that this evaluation has made her more nervous. She worries excessively and reports muscle aches and tension, dry mouth, headaches and abdominal distress. She is irritable and sometimes gets restless. Concentration is reported to be poor and she says she cannot focus and loses her train of thought. She says she cannot follow a 30-minute TV program. She also reports panic attacks in which she is short of breath, sweats, feels like she is choking and has pounding heart. She cannot say how often they occur but the last attack was a couple of weeks ago. They usually last 5 or 10 minutes. She has gone to the hospital and says she was told that her symptoms were, in fact, due to a problem with her heart. Asked about phobias, she reports the common fears of snakes and heights. She describes compulsive counting of ceiling tiles and says she checks the door locks, more often now that she lives alone. She does not hoard but notes that "anything people don't want, they give it to me." She uses hand sanitizer but does not describe excessive concern about germs and contamination and does not report an excessive need for order. Her pastor later says that he has known [redacted] all her life and baptized her 12 years ago. He has noticed that she has gotten more nervous ("quite a bit"). He gives her a ride to church and also took her husband when he was living. He

says that she is now very anxious in the car and worries if he gets too close to the edge of the road. He says she is also nervous at the church.

Substance Use: [redacted] denies ever using alcohol, marijuana, or other recreational substances. She says she has never abused pain pills or other prescription medication. She smokes ½ pack a day and has 5 or 6 cups of coffee, no tea and no soda. She is informed that her caffeine intake may be exacerbating her anxiety and is urged to consider cutting back.

Education: [redacted] says she finished the 7th grade at [redacted]y. She believes she was retained in the 2nd grade and maybe the 4th. School records appear to indicate retention in the 1st and 4th, with social promotion to the 6th. Standardized test scores (Lorge-Thorndike) from 4th grade report Total IQ 53. She was not in special education, home schooled, suspended or expelled. She believes she had developmental delays involving both speech and motor development. Grades were poor and she says that school was hard for her. She was not involved in extracurricular activities but got along fairly well with peers and teachers. She has never attempted to obtain a GED and has not had other training or education.

Work History: [redacted] has never worked for pay or done volunteer work, babysitting or neighborhood jobs.

Psychosocial History: [redacted] was born and raised in [redacted] Virginia. Her mother, who is still living, was a homemaker. Her father worked in the mines and cut logs. He died of cancer 7 years ago. [redacted] was the 5th of 10 children and says she is close to some but not others. She was married at age 18 and her husband worked a strip mine job. She says he died 5 years ago of Alzheimer's and congestive heart failure. They had 2 daughters, now 31 and 36, and they adopted another girl who recently turned 18. When she moved out, [redacted] lost her food stamps. Asked why she has not re-applied, she says she needs to but she appears to be overwhelmed by how to do it. She currently lives alone in a trailer she owns and she has cat. At the end of the evaluation while she is out of the room, her pastor says, "She wouldn't tell you this but," and then goes on to say that her home burned down for the 3rd time a few years ago, after being struck by lightning. He says her financial situation is dire and the church helps her as much as possible, and paid for her husband's funeral.

Legal History: She denies ever being in jail, arrested or charged with any offense.

Abuse History: She denies any history of mental, physical, sexual or emotional abuse. (Some of these questions are asked after the pastor has gone, in the event that she might be uncomfortable with some history, but she did not offer any additional information at that time.)

Military History: She has never served in the military.

Daily Activities: [redacted] goes to bed between 10:30 and 11 and gets up 3 or 4 times in the night. She wakes up around 5 or 5:30 and does not nap during the day. She bathes

every other day and says it is hard for her to get in and out of the tub but she cares for grooming and hygiene without assistance. Her daughters help with household chores and her son-in-law and daughter take care of the lawn. She cooks "every now and then," and does some dishes, laundry and sweeping. She says she can make minor household repairs like changing a light bulb. She uses a telephone and says she has trouble with the directory because of poor vision. She says she has cataracts in both eyes. She has never used public transportation like a bus but thinks she could. She obtained a driver's license after taking the test twice and says she does little driving now. She only goes on short trips and says she cannot find her way home. She leaves her home once a week to go to church and sometimes picks up a few things at the store but her daughters do some shopping for her. She does not read books, newspapers or magazines and says that reading gives her a bad headache. She does not garden or do other outdoors activities and does not use a computer. She thinks she can write a check and says she would need help balancing a checkbook. She pays bills in person using cash. She does not watch TV and listens to a little music in the vehicle.

Social Functioning: [redacted] says she gets along ok with most people but she is shy and avoidant. Her pastor says that she does not like to ask for help and she appears to have limited assertive skills. She says she gets into arguments with her children but does not have a history of interpersonal conflict. She has a few friends from church and only sees them on Sunday. She rarely visits friends or family. She never did participate in social activities. She says she used to go to church 3 times a week and adds that her faith has helped her through her difficult times.

Tests Administered:

Clinical interview
Review of Records
Mental Status Examination
Wechsler Adult Intelligence Scale – 4th Edition (WAIS-IV)

Behavioral Observations and Validity of Findings: Rapport is established and the importance of making a good effort is discussed with [redacted] She is encouraged to give accurate information and is told that apparent exaggeration or inaccurate reporting of symptoms will be noted in the report of evaluation. She indicates that she understands and appears to make a good effort. She approaches testing in a thoughtful, deliberate manner. When questions become more difficult, she says, "I'll try." These results are thought to be an accurate and valid assessment of her functioning.

Test Results:

WAIS-IV: The WAIS-IV provides composite scores with a mean of 100 and a standard deviation of 15. VCI replaces VIQ on the WAIS-III and PRI replaces PIQ on the WAIS-III. CI refers to 95% Confidence Interval. She produces the following:

Scale	Composite Score		(CI)	% Rank	Descriptor
Verbal Comprehension	VCI	66	62-73	1	Extremely Low
Perceptual Reasoning	PRI	60	56-68	0.4	Extremely Low
Working Memory	WMI	71	66-80	3	Borderline
Processing Speed	PSI	68	63-80	2	Extremely Low
Full Scale	FSIQ	60	57-65	0.4	Extremely Low

These scores indicate that relative to other individuals in her age group, [redacted] measured level of intellectual functioning falls within the Mild Mental Retardation range. These findings are generally consistent with her reported education and work history. Pair wise Discrepancy Comparison finds WMI is significantly higher than PRI.

Scaled scores have a mean of 10 which is considered average for someone in this age group, with a standard deviation of 3. She obtains the following subtest scaled scores:

Verbal Comprehension

Subtest	Scaled score
Similarities	3
Vocabulary	5
Information	4

Perceptual Reasoning

Subtest	Scaled score
Block Design	3
Matrix Reasoning	2
Visual Puzzles	5

Working Memory

Subtest	Scaled score
Digit Span	7
Arithmetic	3

Processing Speed

Subtest	Scaled score
Symbol Search	4
Coding	4

Relative to the overall mean of all subtests, she displays a strength on Digit Span. No relative weaknesses are found. It is noted that she has particular difficulty with Block Design and consistently reverses the designs. She has problems comprehending the instructions and must be reminded to use all of the blocks. When she realizes that she has one block out of order, she leaves it and attempts to change the other 3. These behaviors might suggest a learning disability in a younger person and in her case, may reflect some organicity.

WRAT-4: The WRAT-4 is a norm-referenced test of academic achievement that is used to assess basic skills of word reading, sentence comprehension, spelling and math computation. For each subtest, standard scores are reported with a mean of 100 and a

standard deviation of 15. Confidence intervals (CI), percentile ranks, and grade equivalent scores are also reported. She produces:

	Standard Score	95% CI	Percentile	Grade Score
Word Reading	69	62-79	2	4.1
Sentence Comprehension	71	64-80	3	4.7
Spelling	74	66-85	4	4.4
Math Computation	71	62-84	3	3.2
Reading Composite	68	63-75	2	--

These scores indicate that her ability to recognize and pronounce words, spell them, and understand their meaning in the context of a sentence is at 4th grade level. Ability to solve math problems is a little lower.

Mental Status Exam:

Appearance: [redacted] is neatly dressed in tan cropped pants, orange polo shirt and sandals. Her clothing is a little lightweight for the cooler weather today. She has long white hair and is tanned and wears toenail polish. Fingernails are long and clean. She wears glasses and make-up. She gives her height as 5'4" and her weight as 117 pounds. She looks older than her stated age.

Relation to Examiner: She is friendly and cooperative, and makes good eye contact.

Motor/Physical: She is right-hand dominant and wears glasses. She does not use any device to assist hearing, movement or balance. She is restless and fidgety and takes one short break. She sits on the edge of her seat with her arms folded. She chews and picks at her nails and taps her foot.

Speech: Rate and volume of speech are within normal limits. She speaks clearly and coherently, using a regional accent. No unusual latencies or word finding problems are observed.

Affect and Mood: Range of affect is restricted and mood is primarily anxious. She becomes defensive and sounds a little angry and irritable after having problems with mental status questions.

Orientation: She is oriented to person, place and date.

Insight: She displays accurate insight into the nature of her problems. She does not externalize or blame others.

Judgment: She is able to make reasonable decisions and to manage her daily activities; though, she notes that "living alone, seems like it's all hard." She is helped by her daughters with important decisions, and says they advise on matters like caring for the

trailer and maintaining a vehicle. She sounds overwhelmed by these tasks and says, "I need somebody to decide."

Memory: She is able to recall 6 digits forward and one trial of 4 digits backward, which is a good performance relative to her overall intellectual functioning. She can recall what she had for supper last night ("green beans, chicken, potatoes") and cannot give any important story recently in the news. She recalls 4/5 words immediately and is aware that she has omitted one. After a 10-minute delay, she recalls 2/5 and again knows that she omitted 3. She can name the current president but not the governor ("can't think of his name"). Asked to name the last 3 presidents, she says, "Clinton, Bush. The last three? Besides Obama, I can't remember." Ability to report personal history is fair to poor, suggesting some impairment of long-term memory.

Attention and Concentration: Attention is variable and she is confused at times. She has much difficulty with serial 7's and is given a hint to help her get started but still does not comprehend the task. She says, "Count by 7? From 97? 92, 87." She is then asked to do serial 3's and again becomes confused. She slowly begins at 45 and says, "no, 44, 38, 36," and stops to ask that the instructions be repeated. She also has trouble giving three months of the year in reverse order ("oh, Lord, I don't know if I can do that or not"). She begins, "December, February, March," and is stopped and told to begin with "December, November," to which she replies "January." She correctly spells *world* forward but says she cannot do it backward. (She appears to be getting very frustrated and irritable.)

Thought Content and Process: Stream of thought is organized and logical without evidence of loose associations, delusions, flight of ideas or other indicators of psychotic process. Asked if she thinks people talk about her, she says, "I'd say they probably do. Because I'm not as educated as most of them are." Asked if they plot against her, she says, "I'd say some of 'em does." She does not believe she is being followed ("not that I know of"). She denies suicidal or homicidal ideation.

Perception: She denies auditory or visual hallucinations or other unusual perceptual experiences.

Social Judgment: If she lost something that belonged to someone else, she says, "I would hunt for it." If she saw smoke and fire in a crowded theater, she says, "I would run, I guess." She asks that the question about what to do with a found letter be repeated, then says, "I guess I would probably pick it up." She says a lie is "something you intend to do" and a mistake "is just..."

Fund of Knowledge: She says 3 cities or towns in the USA are Richlands, Grundy, and Abingdon. She knows the number of weeks in a year and incorrectly solves $1.00-.17=.82. She cannot identify Amelia Earhart and says, "I don't know. Who was she?"

Abstract Reasoning: She interprets *No use crying over spilled milk* by saying, "For instance, say if you break something, there's no need to cry about it?" She says *People who live in glass houses shouldn't throw stones* means "if you're doing something

somebody else is doing, you shouldn't say anything about what they're doing." She says a dog and cat are alike because "both are cold-blooded animals," and different because "a dog barks, a cat meows."

Diagnostic Impressions:

Axis I: 300.02 Generalized Anxiety Disorder
Panic attacks
Axis II: 317 Mild Mental Retardation
Personality traits (dependent, avoidant)
Axis III: Deferred
Axis IV: Living alone, poor social support, severe financial limitations
Axis V: GAF – 48 (Note: The Global Assessment of Functioning is best used to monitor change over time from the perspective of a single rater. Comparing different ratings made by different observers at different times may lead to inaccurate conclusions.)

Summary and Conclusions: [redacted] is a 55 year-old woman with a 7th grade education and no work history. She has a history of medical problems that include back pain and chronic headaches. She has always had some anxiety and it intensified about 8 years ago when her husband became ill.

Credibility: Self-report, available records, third party report by her pastor, interview presentation and psychological testing are consistent, supporting her credibility.

Diagnostic rationale: [redacted] produces IQ scores of VCI 66, PRI 60, WMI 71, PSI 68 and FSIQ 60, which fall within the Mild Mental Retardation range. Standardized testing from 4th grade reports IQ of 53. Her adaptive functioning is consistent with Mild Mental Retardation in that she has limited communication skills, relies on others for most of her transportation needs, and depends on her daughters for assistance with routine maintenance of her home and vehicles. It seems likely that she has overstated some activities of daily living. She lost food stamps when her daughter moved out and she has not applied because she does not know how. Her pastor notes that she does not like to admit to problems or ask for help. She also has a history of worrying excessively and this got worse when her husband's medical problems became more serious around 2002. She reports greater nervousness around other people and says she is irritable and cannot focus her attention. She has headaches, muscle aches, dry mouth and abdominal distress when anxious. This is consistent with Generalized Anxiety Disorder. She also reports panic attacks in which she feels like she is choking, has chest pain, her heart pounds and she breaks out in a sweat. Panic Disorder is not given because she is unable to say how frequently these attacks occur, but they are often enough to add to her distress. She also has personality traits that impact her functioning. She is socially avoidant and has relied on her family to assist with many routine activities and decision-making. Now, though, her husband is gone and her youngest daughter has left home so she is alone for the first time and is having even more difficulty functioning.

Prognosis: [redacted] intellectual limitations are lifelong and not expected to change. Her anxiety has also been present since childhood but only at the current level since around 2002 or 2003. More aggressive treatment may be helpful in reducing some of her symptoms but significant change is not likely. Her anxiety is expected to continue, especially if she lives alone.

Capability to manage funds: [redacted] may be able to manage funds that might be awarded to her if she has some initial assistance (perhaps from her daughters) in setting up an account. However, she has no experience with this and has paid bills in cash so it is likely that she would have trouble managing finances independently.

Functional information: [redacted] is able to understand and follow simple instructions but requires repetition even for these. She is rather self-conscious about errors and becomes defensive, irritable and frustrated when she does not understand. She is expected to have considerable difficulty learning new skills and will require demonstration and supervision for many tasks until she catches on. Concentration is poor and once it is disrupted, she has great difficulty regaining focus. She is very nervous around people and cannot work with the public. She is also quite nervous in a vehicle, whether she is the driver or passenger. She has trouble making decisions on her own and does not initiate activities.

Treatment recommendations: [redacted] would benefit from learning strategies for managing anxiety. She may also need assistance with some living skills, especially those that involve finances and ways to utilize community resources. However, her previous attempt at counseling was only mildly successful and she may not have understood the intentions of her counselor. She will need specific guidance about how counseling works, what she is expected to do, how to set goals, and so on, if she is to benefit.

Licensed Clinical Psychologist

[redacted]

Office Note

[redacted]

DATE: 09-25-2009

CHIEF COMPLAINT: Lab work results and flu shot.

HISTORY OF PRESENT ILLNESS: This is a 54 year old white female who comes in today initially for a flu shot and then wanting to talk to me because of her blood work. She stated that she wanted to know her lab results and my nurse suggested that she may want to talk to me about it directly because of some of results went up instead of down. This is primarily a discussion visit.

I did review patient's labs. I did explain to her that after one month of being on the Crestor and just under that, that she would _____ maintain good ____ changes as far as increases. Her cholesterol did go up a couple points, in her bad cholesterol. But her triglycerides and her good cholesterol went down. I asked patient to give it another 3 months before making determination. Her liver functions were normal and will continue to check that in the next 3 months as well.

We also reviewed side effects of flu shot and how she can potentially experience influenza like symptoms despite getting the shot. Also described she needs to get her influenza vaccination as well as pneumonia shot. All the patient's questions were answered to her satisfaction. Patient verbalized understanding all instructions and agrees with current plan.

[redacted]

MLG:bjp

D: 09-28-2009 T: 10-13-2009

Permanent Subcommittee on Investigations

EXHIBIT #16d

[redacted]

Office Note

[redacted]

DATE: 11-10-2008

HISTORY OF PRESENT ILLNESS: Patient is a 53 year old female who comes in for a couple of complaints today. First being allergic rhinitis type symptoms with runny nose, nasal congestion. Patient states that she has used a nasal steroid in the past and had good results with this. Patient denies any fevers or chills and states she has just been getting persistent post nasal drainage and cough.

Patient also states she was being evaluated for her social security and as a result she was sent to have pulmonary function test done and was told that she had abnormal pulmonary function test and that her primary care physician should get this report, but I have not yet seen this report. She was told at that evaluation that she should consider getting a nebulizer machine for her COPD.

Finally patient states that her family has been waking her up, sometimes telling her that she is making a lot of noise when she sleeps. Question whether this is actually apnea with some sonorous breathing because of her chronic lung disease.

Another thing patient complained about was with her increasing allergic rhinitis type symptoms and coughing states she now has some right rib pain.

REVIEW OF SYSTEMS: As stated above. All other systems negative.

PHYSICAL EXAMINATION: Weight 140. Height 5'4". Blood pressure 130/90. Heart rate is 95. Temp 97. Respiratory rate is 18. O2 sat is 98%. GENERAL: Patient alert and oriented, no acute distress. HEENT: Pupils equal, round and reactive to light. TM's intact. Nasal mucosa is moist. Lips, teeth and gums normal. NECK: Supple. No JVD. No thyromegaly. No bruits appreciated. HEART: Regular rate and rhythm with no murmur, rub or gallop. LUNGS: Decreased significantly bilaterally. ABDOMEN: Soft, non tender, non distended. EXTREMITIES: No edema, clubbing, or cyanosis.
MUSCULOSKELETAL: Patient has some increased paraspinal muscle spasm noted mid thoracic area with pain to palpation around her right 10th rib. OSTEOPATHIC: Reveals a posteriorly subluxed right 10th rib and T6 rotated right.

ASSESSMENT AND PLAN:

1. Allergic rhinitis. Patient was instructed to use saline sinus rinse on a daily basis to help alleviate some of her allergic rhinitis. She was also given prescription for Flonase to use 2 puffs each nostril daily. If her symptoms do not improve, patient was instructed to follow up with our office again in the near future.

Permanent Subcommittee on Investigations
EXHIBIT #16e

[redacted]

Office Note

[redacted]

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2. COPD. Patient was told recently that she had significant COPD on evaluation for social security. Will obtain that record that was apparently ordered by social security board, but I am not sure exactly how this was done. But will get this report and evaluate it. In the meantime, will give patient a nebulizer machine and start her on some Albuterol and Atrovent to take prn in this machine.
3. Questionable obstructive sleep apnea. Given patient's description of what her family members were telling her she was doing with sonorous breathing and making loud gasping noises, I suspect she does have a component of apnea. Therefore will do an "Are You Sleeping?" evaluation at her home through Lovejoy.
4. Somatic dysfunction of T spine and ribs. Patient was treated with soft tissue technique and high velocity low amplitude treatment and had resolution of her symptoms prior to leaving the office today.

[redacted]

CEG:bjp

D: 11-10-2008 T: 11-12-2008

DISABILITY REPORT - ADULT - Form SSA-3368

(3368) Section 1 - Information About the Disabled Person

A. Nam[redacted]

B. Social Security Numbe[redacted]

C. Daytime Telephone Number (If you do not have a number where we can reach you, give us a daytime number where we can leave a message.):

[redacted]

D. Give the name of a friend or a relative that we can contact (other than your doctors) who knows about your illnesses, injuries, or conditions and can help you with your claim.

Name:	[redacted]
Relationship:	[redacted]
Address:	[redacted]
Daytime Phone:	[redacted]

E. What is your height without shoes? **5' 4"**

F. What is your weight without shoes? **137 lbs.**

G. Do you have a medical assistance card? **Yes**

If "YES", show the number h[redacted]

H. Can you speak and understand English? **Yes**

If "NO", what is your preferred language?

NOTE: If you cannot speak and understand English, we will provide an interpreter, free of charge.

If you cannot speak and understand English, is there someone we may contact who speaks and understands English and will give you messages?

(If "YES", is this the same person as in "D" above? If it is, show "SAME" below, if not complete below.)

I. Can you read and understand English? **Yes**

J. Can you write more than your name in English? **Yes**

Permanent Subcommittee on Investigations
EXHIBIT #16f

(3368) Section 2 - Your Illnesses, Injuries, or Conditions and How They Affect You

A. What are the illnesses, injuries, or conditions that limit your ability to work?

Breathing and back problems with limited education, migraine headaches, problems seeing, and high blood pressure.

B. How do your illnesses, injuries, or conditions limit your ability to work?

I cannot breathe real good and have to use inhalers all the time. My back hurts too bad to lift, stand or sit for any length of time. I keep migraine headaches all the time. My blood pressure is not under control so I stay dizzy. I can't see very well either.

C. Do your illnesses, injuries, or conditions cause you pain or other symptoms? **Yes**

D. When did your illnesses, injuries, or conditions first interfere with your ability to work? **2004**

E. When did you become unable to work because of your illnesses, injuries, or conditions?

02/01/2008

F. Have you ever worked? No

G. Did you work at any time after the date your illnesses, injuries, or conditions first interfered with your ability to work?

H. If "Yes," did your illnesses, injuries, or conditions cause you to:

work fewer hours?

change your job duties?

make any job-related changes such as your attendance, help needed, or employers?

Explain:

I. Are you working now?

If "NO," when did you stop working?

J. Why did you stop working?

(3368) Section 3 - Information About Your Work

A. List all the jobs that you had in the 15 years before you became unable to work because of your illnesses, injuries, or conditions.

* = Longest Job Held

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Widow's Insurance Benefits (Disability) and Supplemental Security Income
[redacted] (Wage Earner)	[redacted] (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before the undersigned on a request for hearing dated March 9, 2009 (20 CFR 404.929 *et seq.* and 416.1429 *et seq.*). The claimant is alleging disability since February 1, 2008.

On June 16, 2010, the undersigned held a video hearing (20 CFR 404.936(c) and 416.1436(c)). The claimant appeared in Bluefield, WV, and the undersigned presided over the hearing from Roanoke, VA. P [redacted], an impartial vocational expert, also appeared at the hearing. The claimant is represented by I [redacted], an attorney. The record was left open to allow time for the undersigned to obtain a consultative psychological evaluation of the claimant.

The report of the claimant's psychological evaluation was received and reviewed by the undersigned (Exhibit 12F).

ISSUES

The issue is whether the claimant is disabled under sections 216(i), 223(d), 202(e), and 1614(a)(3)(A) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

Other issues are whether the claimant is the widow of the deceased worker, has attained the age of 50, is unmarried (unless one of the exceptions in 20 CFR 404.335(e) apply), and has a disability that began before the end of the prescribed period. The prescribed period ends with the month before the month in which the claimant attains age 60, or, if earlier, either 7 years after the worker's death or 7 years after the widow was last entitled to survivor's benefits, whichever is later.

In this case, the claimant's prescribed period began on September 14, 2005, the date the wage earner died. Therefore, the claimant must establish that her disability began on or before September 30, 2012 in order to be entitled to a disabled widow's benefits.

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EXHIBIT #16g

After careful review of the entire record, the undersigned finds that the claimant has been disabled from February 1, 2008, through the date of this decision. The undersigned also finds that disability was established during the prescribed period for entitlement to disabled widow's benefits.

APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, or work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f) and 416.920(f)). If the claimant has the residual functional capacity to do her past relevant work,

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the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the undersigned must determine whether the claimant is able to do any other work considering her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, she is not disabled. If the claimant is not able to do other work and meets the duration requirement, she is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g), 404.1560(c), 416.912(g) and 416.960(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. The claimant is the unmarried widow of the deceased insured worker and has attained the age of 50. The claimant met the non-disability requirements for disabled widow's benefits set forth in section 202(e) of the Social Security Act.

2. The prescribed period ends on September 30, 2012.

3. The claimant has not engaged in substantial gainful activity since February 1, 2008, the alleged onset date (20 CFR 404.1520(b), 404.1571 *et seq.*, 416.920(b) and 416.971 *et seq.*).

4. The claimant has the following severe impairments: mental retardation and anxiety (20 CFR 404.1520(c) and 416.920(c)).

On September 27, 2010, [redacted]., performed a consultative psychological evaluation of the claimant (Exhibit 12F). On this administration of the WAIS-IV, the claimant attained a Full Scale IQ of 60. During standardized testing in the 4th grade, the claimant was assessed with a Total IQ of 53 (Exhibit 12F-3). [redacted] diagnosed the claimant with anxiety disorder, mild mental retardation, and a global assessment of functioning (GAF) score of 48.

5. The severity of the claimant's impairments meets the criteria of section 12.05C of 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 416.920(d) and 416.925).

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and 416.929 and SSRs 96-4p and

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96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and 416.927 and SSRs 96-2p, 96-6p and 06-3p.

The claimant's impairments meet listing 12.05C. The "paragraph C" criteria of this listing are met because the claimant has mental retardation initially manifested before age 22 with a valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function.

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The record does not contain an assessment of the claimant's mental limitations from a state agency psychological consultant.

6. The claimant has been under a disability as defined in the Social Security Act since February 1, 2008, the alleged onset date of disability (20 CFR 404.1520(d) and 416.920(d)).

DECISION

Based on the application for disabled widow's benefits protectively filed on June 11, 2008, the claimant has been disabled under sections 202(e) and 223(d) of the Social Security Act since February 1, 2008.

Based on the application for supplemental security income protectively filed on June 11, 2008, the claimant has been disabled under section 1614(a)(3)(A) of the Social Security Act since February 1, 2008.

The component of the Social Security Administration responsible for authorizing supplemental security income will advise the claimant regarding the nondisability requirements for these payments and, if the claimant is eligible, the amount and the months for which payment will be made.

/s/ William B. Russell

William B. Russell
Administrative Law Judge

January 28, 2011
Date

(The following is a transcript in the hearing held before William B. Russell, Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, on June 16, 2010, at Roanoke, Virginia, in the case of [redacted], Social Security Number [redacted]. The Claimant appeared in person and was represented by [redacted] Attorney. Also present were Dr. [redacted], Medical Expert and [redacted] Vocational Expert.)

(The hearing commenced at 3:04 p.m. on June 16, 2010.)

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

ALJ: You are [redacted], is that correct?

CLMT: Yes.

ALJ: [redacted] I'm Judge Russell. I'm the Administrative Law Judge assigned to hear your case. I'd like you to know I have no connection to the prior agency that has denied your claim for benefits and I will be issuing you a totally new and independent decision. [redacted] (PHONETIC) is here to assist me. He's a medical doctor. [redacted] (PHONETIC) is a Vocational Expert. I've had a pre-hearing conference with [redacted] so we will -- may have an abbreviated hearing.

If anyone asks you a question, if you don't understand the question or don't know the answer, please stop and tell us you don't know or you don't understand. Fair enough?

CLMT: Yes.

ALJ: All right. [redacted] you have one, requested the right to send [redacted] out for a -- your own consult, psychological. Is that correct?

ATTY: That's correct, Your Honor. I've discussed it with her. She's agreed to go. I would like permission to send any imposed here.

ALJ: All right. I'll give you 60 days on that. 60 days CE, by

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EXHIBIT #16h

attorney. All right, you have also pointed out that based on your claimants education, lack of a work history and age, that age 60 and age 55, based on Exhibit 7F which limited her to medium work, she would grid and you -- as I understood, your pre-hearing motion or request to me was that you be allowed the psychological, if the psychological did not justify disability before her 55th birthday that you were going to amend to her 55th birthday, where she will automatically grid. Is that correct?

ATTY: That's fully correct, Your Honor.

ALJ: All right, I will grant that too. I do have to take some testimony from the claimant. Did you have any objections to the evidence of record as it stands now?

ATTY: No, Your Honor.

ALJ: I will admit the evidence founds in sections A through F into the record.

(Exhibits A through F, previously identified, were received into evidence and made a part of the record thereof).

ALJ: All right, [redacted], I have to get some information from you and I have to take testimony under oath. Do you have any objection to giving me sworn statement?

CLMT: No.

ALJ: Would you raise your right hand along with my experts?

(The Claimant, [redacted], having been first duly sworn, testified as follows:)

EXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE:

Q [redacted] may I begin by asking you your current address?

A It's [redacted]

Q All right, and your home phone number?

A [redacted]

Q All right. You're alleging disability from February 1, 2008, is that sound correct?

A I think so.

Q Oh, okay. Had you worked since that day, or have you ever had a job in your life?

A No, I've never had a job.

Q All right. How far did you go in school?

A Seven.

Q All right. Did you ever get a GED?

A No.

Q How tall are you?

A 5'4".

Q Do you know your current weight?

A I think, 115, I believe.

Q What was your weight in 2008? Do you -- give your best guess.

A Probably 130, I'm, I'm not for sure.

Q You've lost a little weight then?

A Yes.

Q Okay. Do you have a driver's license?

A Yes.

Q All right. How well do you read and write?

A Not very well.

Q How did you pass the driving test?

A I took it -- it was like a written test, whenever --

Q Right.

A -- I took it, and I think I just barely did pass it.

Q All right, but you could read over it. Did they read it to you or did you have to read it yourself?

A I bet I had some help with it.

Q Okay, now, [redacted] I'm going to ask you questions, and if it turns this happened, it's okay. I know, know from past experience now that some of the rural counties in Virginia, when you're trying to get your drivers exams sometimes they come up and kind of tap on the paper and give you hints. Did that happen in your case?

A I think so.

Q Okay, all right.

(The Vocational Expert, [redacted] having been first duly sworn, testified as follows:)

EXAMINATION OF VOCATIONAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q [redacted], any indication of a work history.

A No work history.

Q All right.

ALJ: [redacted], unless you have something to add, I will wait on [redacted] (PHONETIC) report and in the alternative to the report she will grid out at age 55 anyway. Otherwise, I would like to ask [redacted] one, one or two more questions.

REXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE.

Q [redacted], you are the widow of [redacted] (PHONETIC). Is that correct?

A Yes.

Q Had you remarried?

A No.

Q Okay. That's all I have for you. [redacted] thank you for coming in. [redacted], will talk to you about what's happening after the hearing. There will be nothing further. The hearing will close at --

HA: 3:10 p.m.

(The hearing closed at 3:10 p.m. on June 16, 2010.)

CERTIFICATION

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded at the hearing held in the case of [redacted], before Administrative Law Judge, William B. Russell.

Phyllis L Kopytko, Transcriber
Free State Reporting, Inc.

Caroline Musterman, Proofreader
Free State Reporting, Inc.

DISABILITY REPORT - ADULT - Form SSA-3368

(3368) Section 1 - Information About the Disabled Person

A. Name: [redacted]

B. Social Security Number: [redacted]

C. Daytime Telephone Number (If you do not have a number where we can reach you, give us a daytime number where we can leave a message.):

[redacted] **Your number**

D. Give the name of a friend or a relative that we can contact (other than your doctors) who knows about your illnesses, injuries, or conditions and can help you with your claim.

Name:	[redacted]
Relationship:	[redacted]
Address:	[redacted]
Daytime Phone:	[redacted]

E. What is your height without shoes? **5' 1"**

F. What is your weight without shoes? **170 lbs.**

G. Do you have a medical assistance card? **Yes**

If "YES", show the number here: **?**

H. Can you speak and understand English? **Yes**

If "NO", what is your preferred language?

NOTE: If you cannot speak and understand English, we will provide an interpreter, free of charge.

If you cannot speak and understand English, is there someone we may contact who speaks and understands English and will give you messages?

(If "YES", is this the same person as in "D" above? If it is, show "SAME" below, if not complete below.)

I. Can you read and understand English? **Yes**

J. Can you write more than your name in English? **Yes**

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EXHIBIT #17a

(3368) Section 2 - Your Illnesses, Injuries, or Conditions and How They Affect You

A. What are the illnesses, injuries, or conditions that limit your ability to work?

diabetes, heart, high blood pressure, cholesterol, depression, degenerative disc disease, left elbow pain, and limited use of left hand

B. How do your illnesses, injuries, or conditions limit your ability to work?

The diabetes is not controlled by the medications. I can't see well out of my right eye and get headaches and dizziness. I have numbness in my feet and they give out from under me. I have difficulty walking, shortness of breath, easily fatigued, sleep a lot, blurred vision, thirstiness, uncontrollable infections, cuts don't heal propery, numbness in fingers and toes. I have been falling and am afraid to go anywhere with out anyone. I am tired all the time and my immune system is very bad now.

C. Do your illnesses, injuries, or conditions cause you pain or other symptoms? **Yes**

D. When did your illnesses, injuries, or conditions first interfere with your ability to work? **11/06/07**

E. When did you become unable to work because of your illnesses, injuries, or conditions?

11/06/2007

F. Have you ever worked? **Yes**

G. Did you work at any time after the date your illnesses, injuries, or conditions first interfered with your ability to work? **No**

H. If "Yes," did your illnesses, injuries, or conditions cause you to:

work fewer hours?

change your job duties?

make any job-related changes such as your attendance, help needed, or employers?

Explain:

I. Are you working now? **No**

If "NO," when did you stop working? **07/07/2007**

J. Why did you stop working?

I got laid off then had a heart attack in November 2007 and health went down hill and could no longer work.

(3368) Section 3 - Information About Your Work

A. List all the jobs that you had in the 15 years before you became unable to work because of your illnesses, injuries, or conditions.

* = Longest Job Held

Longest Job Held	Job Title	Type of Business	Dates Worked (From-To)	Hours Per Day	Days Per Week	Rate of Pay/Per
*	**scheduler**	**bed company**	**05/1993 - 07/2007**	**8**	**5**	**$16.00/Hour**

B. Which job did you do the longest?

scheduler

C. Describe this job. What did you do all day? (If you need more space, write in the "Remarks" section.):

answer phone calls from distributor, take the info about what product they wanted, office work and pack up one a month and move boxes upstairs

D. In this job, did you:

Use machines, tools, or equipment? **Yes**

Use technical knowledge or skills? **No**

Do any writing, complete reports, or perform duties like this? **Yes**

E. In this job, how many total hours each day did you:

Walk? **1**

Stand? **1**

Sit? **8**

Climb? **0**

Stoop? (Bend down & forward at waist.): **1**

Kneel? (Bend legs to rest on knees.): **0**

Crouch? (Bend legs & back down & forward.): **0**

Crawl? (Move on hands & knees.): **0**

Handle, grab or grasp big objects? **1**

Reach? **2**

Write, type or handle small objects? **8**

F. Lifting and Carrying (Explain what you lifted, how far you carried it, and how often you did this.):

lifted boxes of orders once a month and carried them upstairs in the beginning and in the end others did it for me

G. Heaviest weight lifted: **Less than 10 lbs.**

H. Weight you frequently lifted (By frequently, we mean from 1/3 to 2/3 of the workday.):

Less than 10 lbs.

I. Did you supervise other people in this job? **No**

How many people did you supervise?

What part of your time was spent supervising people?

Did you hire and fire employees?

J. Were you a lead worker? **No**

(3368) Section 4 - Information About Your Medical Records

A. Have you been seen by a doctor/hospital/clinic or anyone else for the illnesses, injuries, or conditions that limit your ability to work?

Yes

B. Have you been seen by a doctor/hospital/clinic or anyone else for emotional or mental problems that limit your ability to work?

Yes

C. List other names you have used on your medical records:

Tell us who may have medical records or other information about your illnesses, injuries, or conditions.

D. List each Doctor/HMO/Therapist. Include your next appointment:

Name: [redacted]			
Address: [redacted]		Date First Visit:	**04/08**
[redacted]		Date Last Visit:	**06/13/08**
Phone: [redacted]	atient ID # :	Next Appointment:	**07/10/08**
Reasons for Visits:			
primary care			
What treatment was received?			
exams, medications			
Name: [redacted]			

Address:	ATTN: MEDICAL RECORDS	Date First Visit:	06/11/08
	[redacted]	Date Last Visit:	07/02/08
Phone: [redacted]	Patient ID # :	Next Appointment:	pending

Reasons for Visits:
neurologist
What treatment was received?
tests

Name: [redacted]

Address:	ATTN: MEDICAL RECORDS	Date First Visit:	07/11/08
	[redacted]	Date Last Visit:	07/11/08
Phone: [redacted]	Patient ID # :	Next Appointment:	07/21/08

Reasons for Visits:
congestive heart failure
What treatment was received?
consultation while in Russell County Medical Center in Lebanon VA

E. List each Hospital/Clinic. Include your next appointment:

Name: [redacted]
Address: ATTN: MEDICAL RECORDS
[redacted]
Phone: [redacted]

Inpatient Date In 1:	06/11/08	Inpatient Date Out 1:	06/12/08
Inpatient Date In 2:	06/24/08	Inpatient Date Out 2:	06/25/08
Inpatient Date In 3:		Inpatient Date Out 3:	
Outpatient Date First Visit:		Outpatient Date Last Visit:	

Emergency Room Dates of Visits:
Next Appointment: **none**
Your Hospital/Clinic Number:
Reasons for Visits:
?
What treatment did you receive?
?
What doctors do you see at this hospital/clinic on a regular basis?

Name: [redacted]
Address: **ATTN: MEDICAL RECORDS**
[redacted]
Phone: [redacted]

Inpatient Date In 1:		Inpatient Date Out 1:	
Inpatient Date In 2:		Inpatient Date Out 2:	
Inpatient Date In 3:		Inpatient Date Out 3:	
Outpatient Date First Visit:	?	Outpatient Date Last Visit:	?

Emergency Room Dates of Visits:
Next Appointment: **none**
Your Hospital/Clinic Number:
Reasons for Visits:
testing
What treatment did you receive?
testing
What doctors do you see at this hospital/clinic on a regular basis?

Name: [redacted]
Address: **ATTN [redacted] MEDICAL RECORDS**
[redacted]
Phone: [redacted]

Inpatient Date In 1:	**07/10/08**	Inpatient Date Out 1:	**currently in hospital**
Inpatient Date In 2:		Inpatient Date Out 2:	
Inpatient Date In 3:		Inpatient Date Out 3:	
Outpatient Date First Visit:		Outpatient Date Last Visit:	

Emergency Room Dates of Visits:
Next Appointment: **none**
Your Hospital/Clinic Number:
Reasons for Visits:
congestive heart failure, diabetes
What treatment did you receive?
stress test, bloodwork
What doctors do you see at this hospital/clinic on a regular basis?

DuPlEx

Supplemental Security Income

Notice of Reconsideration - Disability

From: Social Security Administration

Date: April 15, 2009
Claim Number: [redacted]
Reconsideration Filed: 10/20/2008

[redacted]

Upon receipt of your request for reconsideration we had your claim independently reviewed by a physician and disability examiner in the State agency which works with us in making disability determinations. The evidence in your case has been thoroughly evaluated; this includes the medical evidence and the additional information received since the original decision. We find that the previous determination denying your claim was proper under the law.

If you believe that the reconsideration determination is not correct, you may request a hearing before an administrative law judge of the Office of Disability Adjudication and Review. If you want a hearing you must request it not later than 60 days from the date you receive this notice. You may make your request through any Social Security office or on the Internet at http://www.socialsecurity.gov/disability/appeal. As part of the appeal process, you also need to tell us about your current medical condition. We provide a form for doing that, the Disability Report – Appeal. You may contact one of our offices or call 1-800-772-1213 to request this form. Or, you may complete the report online after you complete the online Request for Hearing by Administrative Law Judge. Read the enclosed leaflet and the full explanation of your right to appeal on the second page of this notice.

How We Made The Decision

The following evidence was considered in evaluating your claim in addition to the medical reports already in file.

[redacted] report received 01/13/2009
[redacted] report received 12/13/2008
[redacted] port received 01/15/2009
[redacted] report received 12/08/2008
[redacted] L report received 12/29/2008
[redacted] report received 12/23/2008
[redacted] D report received 12/12/2008
[redacted] T report received 12/17/2008
[redacted] report received 03/07/2009
records submitted by attorney on 2/26/09

We have determined that your condition is not severe enough to keep you from working. We considered the medical and other information, your age, education, training, and work experience in determining how your condition affects your ability to work.

You said that you are unable to work because of diabetes,dizziness, numbness in hands and feet; heart disease, prior congestive heart failure, hbp and cholesterol; depression; degenerative disc disease, problems with left elbow and hand; vision problems; shortness of breath; sleep apnea; headaches; carpal tunnel; frequent bladder infections.

The evidence shows that Diabetes and hypertension have not caused damage to any vital organs. Your records indicate that you may have discomfort in your back, hands, or various other joints or muscles, however, you remain able to

[redacted]

Permanent Subcommittee on Investigations
EXHIBIT #17b

stand, walk and move about adequately without assistance. You are able to use your hands and arms to perform ordinary tasks. You may experience fluctuations in vision at times, but evidence shows that your vision is corrected with prescription lenses. You have a history of heart disease with stent placement, but your records reveal that your heart is functioning satisfactorily at this time. Upon examination, your heart has a regular rate and rhythm, your lungs are clear and you have adequate breathing ability. You have normal reflexes and good muscle strength. Migraine headaches with some associated numbness or dizziness at times are treatable and should not prevent you from working on a regular basis. You may feel depressed at times, but this does not prevent you from performing ordinary activities such as caring for your personal needs, doing light household chores, managing your finances and socializing. Werealize you may continue to have difficulties, but your condition is not so severe as to be disabling.

Based on the description of the job you performed as a scheduler in the past for several years, we have concluded that you have the ability to do this job.

If You Want Help With Your Appeal

You can have a friend, lawyer, or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it.

New Application

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with this decision and you file a new application instead of appealing you might lose some benefits, or not qualify for any benefits. So, if you disagree with this decision, you should file an appeal within 60 days.

You may want to contact your local public assistance office to find out if you qualify for payments from them.

The application you filed with us is not an application for medical assistance (Medicaid). If you need medical assistance or have any questions about your eligibility for Medicaid, you should get in touch with your local welfare/social service office.

Please get in touch with Social Security if you believe this decision is wrong or you have any questions or need more information. Most questions can be handled by phoning or writing any Social Security office. If you visit a Social Security office, please bring this notice with you. If the decision in your case is based on incorrect information, we will be happy to make whatever change is necessary.

Your Right To Appeal

If you still are not satisfied with the decision, you may request a hearing of this decision by the Office of Hearings and Appeals. YOU MUST REQUEST THE HEARING IN WRITING WITHIN 60 DAYS FROM THE DATE YOU RECEIVE THIS NOTICE. If you cannot send us a written request for a hearing within 60 days, be sure to contact us by phone. If you wait longer than 60 days, we will not conduct a hearing review of our decision unless you have a good reason for the delay.

If you request a hearing, your case will be assigned to an administrative law judge of the Office of Hearing and Appeals. The administrative law judge will let you know when and where your case will be heard.

The hearing proceedings are informal. The administrative law judge will summarize the facts in your case, explain the law, and state what must be decided. Then you will have an opportunity to explain why you disagree with the decision made in your case, to present additional evidence and to have a witnesses testify for you. You can also request the administrative law judge to subpoena unwilling witnesses to appear for cross-examination and to bring with them any information about your case. You have the right to request the administrative law judge to issue a decision based on the written record without you personally appearing before him/her. If you decide not to appear at the hearing, you still have the right to submit additional evidence. The administrative law judge will base the decision on the evidence in your file plus any new evidence submitted.

In having your case heard, you can represent yourself or be represented by a lawyer, a friend, or any other person. Contact your Social Security office for names of organizations that can help you.

[redacted]

Laurie Watkins
Regional Commissioner

Enclosure:
SSA Pub. No. 70-10281
SSA-L1130
SiMpLeX

CC: [redacted]

[redacted]

FORM APPROVED
EXPIRES: NOV 30
OMB NO. 0960-0431

PHYSICAL RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT

CLAIMANT: [redacted]

SOCIAL SECURITY NUMBER: [redacted]

NUMBERHOLDER (IF CDB CLAIM):

PRIMARY DIAGNOSIS:
DDD

SECONDARY DIAGNOSIS:
Diabetes Mellitus

OTHER ALLEGED IMPAIRMENTS:
HTN, Sleep Apnea, Carpal Tunnel, CAD, Migraine headaches

RFC ASSESSMENT IS FOR:
- [X] CURRENT EVALUATION
- [ ] DATE LAST INSURED:
- [ ] DATE 12 MONTHS AFTER ONSET:
- [ ] OTHER (SPECIFY):

PRIVACY ACT/PAPERWORK ACT NOTICE: The information requested on this form is authorized by Section 223 and Section 1633 of the Social Security Act. The information provided will be used in making a decision on this claim. Failure to complete this form may result in a delay in processing this claim. Information furnished on this form may be disclosed by the Social Security Administration to another person or governmental agency only with respect to Social Security programs and to comply with federal laws requiring the exchange of information between Social Security and other agencies.

The PAPERWORK REDUCTION ACT of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to, a collection of information unless it displays a valid OMB control number.

TIME IT TAKES TO COMPLETE THIS FORM: We estimate that it will take you about 20 minutes to complete this form. This includes the time it will take to read the instructions, gather the necessary facts and fill out the form. If you have comments or suggestions on this estimate, write Social Security Administration ATTN: Reports Clearance Officer, 1-A-21 Operations Building, Baltimore, MD 21235-0001. Send only comments relating to our "time it takes" estimate to the office listed above. All requests for Social Security cards and other claims-related information should be sent to your local Social Security office, whose address is listed under Social Security Administration in the U.S. Government section of your telephone directory.

I. LIMITATIONS:

For Each Section A - F

⇒ Base your conclusions on **all evidence** in file (clinical and laboratory findings; symptoms; observations; lay evidence; reports of daily activities; etc.).

⇒ Check the blocks which reflect your **reasoned judgment.**

⇒ Describe how the **evidence substantiates your conclusions.** (Cite specific clinical and laboratory findings, observations, lay evidence, etc.).

⇒ Ensure that you have requested:

- Appropriate treating and examining source statements regarding individual's capacities (DI 22505.000ff. and DI 22510.000ff.) and that you have given **appropriate weight to treating source conclusions.** (see section III)
- Considered and responded **to any alleged limitations imposed by symptoms** (pain, fatigue, etc.) attributable, in your judgment, to be medically determinable impairment. Discuss your assessment of symptom-related limitations in the explanation for your conclusions in A-F below. (See also section II.)
- Responded to all allegations of physical limitations or factors which can cause physical limitations.

⇒ **Frequently** means occurring one-third to two-thirds of an 8-hour workday (cumulative, not continuous).
Occasionally means occurring from very little up to one-third of an 8-hour work day (cumulative, not continuous).

FORM SSA-4734-BK (1-89)
(FORMERLY SSA-4734-U8 USE PRIOR EDITIONS)

CONTINUED ON PAGE 2

Permanent Subcommittee on Investigations
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A. EXERTIONAL LIMITATIONS

☐ None established. (Proceed to section B.)

1. **Occasionally** lift and/or carry (including upward pulling) (maximum) -- when less than one-third of the time or less than ten pounds, explain the amount (time/pounds) in item 6.

☐ less than 10 pounds
☐ 10 pounds
☒ 20 pounds
☐ 50 pounds
☐ 100 pounds or more

2. Frequently lift and/or carry (including upward pulling) (maximum) -- when less than two-thirds of the time or less than ten pounds, explain the amount (time/pounds) in item 6.

☐ less than 10 pounds
☒ 10 pounds
☐ 25 pounds
☐ 50 pounds or more

3. Stand and/or walk (with normal breaks) for a total of --

☐ less than 2 hours in an 8-hour workday
☐ at least 2 hours in an 8-hour workday
☒ about 6 hours in an 8-hour workday
☐ medically required hand-held assistive device is necessary for ambulation

4. Sit (with normal breaks) for a total of --

☐ less than about 6 hours in an 8-hour workday
☒ about 6 hours in an 8-hour workday
☐ must periodically alternate sitting and standing to relieve pain and discomfort. (If checked, explain in 6.)

5. Push and/or pull (including operation of hand/foot controls) --

☒ unlimited, other than shown for lift and/or carry
☐ limited in **upper** extremities (describe nature and degree)
☐ limited in **lower** extremities (describe nature and degree)

6. Explain how and why the evidence supports your conclusions in items 1 through 5. Cite the specific facts upon which your conclusions are based.

See Attached

B. POSTURAL LIMITATIONS

☐ None established. (Proceed to section C.)

	Frequently	Occasionally	Never
1. Climbing - ramp/stairs	☐	☒	☐
- ladder/rope/scaffolds (Should avoid all ladders, ropes and scaffolds.)			
2. Balancing	☒	☐	☐
3. Stooping	☒	☐	☐
4. Kneeling	☒	☐	☐
5. Crouching	☒	☐	☐
6. Crawling	☒	☐	☐

7. When less than two-thirds of the time for frequently or less than one-third of the time for occasionally, fully describe and explain. Also explain how and why evidence supports your conclusions in items 1 through 6. Cite the specific facts upon which your conclusions are based.

See Attached

C. MANIPULATIVE LIMITATIONS

☒ None established. (Proceed to section D.)

	LIMITED	UNLIMITED
1. Reaching all directions (including overhead)	☐	☐
2. Handling (gross manipulation)	☐	☐
3. Fingering (fine manipulation)	☐	☐
4. Feeling (skin receptors)	☐	☐

5. Describe how the activities checked "limited" are impaired. Also, explain how and why the evidence supports your conclusions in item 1 through 4. Cite specific facts upon which your conclusion is based.

See Attached

D. VISUAL LIMITATIONS

☒ None established. (Proceed to section E.)

	LIMITED	UNLIMITED
1. Near acuity	☐	☐
2. Far acuity	☐	☐
3. Depth perception	☐	☐
4. Accommodation	☐	☐
5. Color vision	☐	☐
6. Field of vision	☐	☐

7. Describe how faculties checked "limited" are impaired. Also explain how and why evidence supports your conclusions in item 1 through 6. Cite specific facts upon which your conclusions are based.

See Attached

E. COMMUNICATIVE LIMITATIONS

☒ None established. (Proceed to section F.)

	LIMITED	UNLIMITED
1. Hearing	☐	☐
2. Speaking	☐	☐

3. Describe how the faculties checked in "limited" are impaired. Also, explain how and why the evidence supports your conclusions in items 1 and 2. Cite the specific facts upon which your conclusions are based.

See Attached

F. ENVIRONMENTAL LIMITATIONS

☐ None established. (Proceed to section II.)

	UNLIMITED	AVOID CONCENTRATED EXPOSURE	AVOID EVEN MODERATE EXPOSURE	AVOID ALL EXPOSURE
1. Extreme cold	☒	☐	☐	☐
2. Extreme heat	☒	☐	☐	☐
3. Wetness	☒	☐	☐	☐
4. Humidity	☒	☐	☐	☐
5. Noise	☒	☐	☐	☐
6. Vibration	☒	☐	☐	☐
7. Fumes, odors, dusts, gases, poor ventilation, etc.	☒	☐	☐	☐
8. Hazards (machinery, heights, etc.)	☐	☒	☐	☐

9. Describe how these environmental factors impair activities and identify hazards to be avoided. Also, explain how and why evidence supports your conclusions in items 1 through 8. Cite the specific facts upon which your conclusions are based.

See Attached

II. SYMPTOMS

For symptoms alleged by the claimant to produce physical limitations, and for which the following have not previously been addressed in section I, discuss whether:

A. The symptom(s) is attributable, in your judgment, to a medically determinable impairment

B. The severity or duration of the symptom(s), is in your judgment, is disproportionate to the expected severity or expected duration on the basis of the claimant's medically determinable impairment(s).

C. The severity of the symptom(s) and it's alleged effect on function is consistent, in your judgment, with the total medical and non-medical evidence, including statements by the claimant and others, observations regarding activities of daily living, and alterations of usual behavior or habits.

See Attached

III. TREATING OR EXAMINING SOURCE STATEMENT(S)

A. Is treating or examining source statement(s) regarding the claimant's physical capacities in file?

☒ Yes ☐ No (includes situations which there was no source or when the source(s) did not provide a statement regarding the claimant's physical capacities.)

B. If yes, are there treating/examining source conclusions about the claimant's limitations or restrictions which are significantly different from your findings?

☒ Yes ☐ No

C. If yes, explain why those conclusions are not supported by the evidence file. (Cite the source's name and the statement date)

See Attached

MEDICAL CONSULTANT'S SIGNATURE	MEDICAL CONSULTANT'S CODE	DATE
[redacted]	12	4/9/09

[redacted]

RFC Continuation

Sections Being Modified

SSA-4734-UA – Physical RFC

- [x] Section I. Limitations
- [x] Section II.. Symptoms
- [x] Section III. Medical Source Statements

SSA-4734-BK-Sup – Mental RFC

- [ ] Section III. Functional Capacity Assessment

SSA-2506-BK – PRTF

- [ ] Psychiatric Review Technique Form

SSA-538-F6 – Childhood Disability Evaluation Form

- [ ] Section III. Explanation of Findings

These findings complete the medical portion of the disability determination.

48 year-old female alleges "**diabetes, heart, hypertension, cholesterol,** depression, **degenerative disc disease, left elbow pain, limited use of left hand, headaches, dizziness, numbness in feet, fatigue, shortness of breath, blurred vision**". Diagnosis: (1) Chronic lower back pain and pain and numbness in the lower extremities musculoskeletal in nature from chronic degenerative lumbar disk disease, as well as small fiber generalized neuropathy from diabetes mellitus, (2) Chronic pain and numbness in the upper extremities from moderate bilateral carpal tunnel syndrome; (3) Recurrent migraine/tension headaches; (4) Chronic polyarthralgia; (5) Anxiety disorder with insomnia, (6) Obstructive sleep apnea. Medications: Elavil, Plavix, Gemfibrozil, Pravastatin, Metformin, Atenolol, Lexapro, Lisinopril, Glipizide, Aspirin, and Lantus insulin.

Alleged onset date: 11/06/2007
Educational years: 12 GRADE No special education
Vocational background: [redacted]
Occupational years: 15 DLI date: 12/31/2012
Visual impairment
Concurrent

6/11/08 Physical examination is unremarkable for significant abnormality.

6/24/08 MRI scan of the brain: Small area of increased signal intensity in the white matter on the left, which may represent chronic ischemic change. There is only one area involved, and there is no enhancement.

7/10/08 chest x-ray: unremarkable for significant abnormality.

7/1/08 EKG: Negative EKG component, but positive symptoms

7/11/08 Echocardiogram: Trivial mitral regurgitation; otherwise benign echocardiogram with normal left ventricular cavity size and normal left ventricular systolic function.

7/11/08 Stress myocardial perfusion imaging scan: negative, normal stress myocardial perfusion imaging; also negative, normal gated SECT imaging.

7/18/08 Polysonography revealed obstructive sleep apnea-hypopnea syndrome with significant response to CPAP therapy.

7/30/08 Physical examination: Blood pressure 122/68; she is awake, alert and oriented to person, place, and time. Her speech and cognition are normal. Cranial nerves 2 to 12 are intact. No nystagmus noted. She has normal muscle strength in all four extremities. No sensory deficit elicited. DTRs are 2+/2+ bilaterally symmetrical. Her coordination and gait are normal.

Activities of daily living reveal the claimant manages personal care independently. She prepares complete meals. Concerning house hold chores, she dusts, vacuuming, and does the laundry. She drives a car. She shops for groceries, clothes, and medicine. She manages her personal finances. She socializes regularly. She can walk up to one-half mile. She ambulates with a cane. She can follow instructions with some repetition. She gets along with authority figures.

Records reveal no significant damage to vital organs due to hypertension, diabetes mellitus, or cholesterol levels. There is no significant abnormality related to headaches, dizziness, numbness, fatigue, shortness of breath, and blurred vision. She has adequate range of motion and muscle strength throughout.

In assessing the credibility of the claimant's statements regarding symptoms and their effects on function, her medical history was considered.

Of greatest significance in determining the credibility of the claimant's statements regarding symptoms and their effects on her functioning was her medical history. The description of the symptoms and limitations provided by the claimant throughout the record has been inconsistent and is not persuasive. Based on the evidence of record, the claimant's statements are found to be partially credible.

RECONSIDERATION ADDENDUM

The claimant alleges diabetes,dizziness, numbness in hands and feet; heart disease, prior congestive heart failure, hbp and cholesterol; depression; degenerative disc disease, problems with left elbow and hand; vision problems; shortness of breath; sleep apnea; headaches; carpal tunnel; frequent bladder infections, and that her condition has worsened. The evidence establishes the impairments of DDD, Diabetes Mellitus, CAD (s/p acute coronary syndrome and placement of 2 stents), HTN, Obstructive Sleep Apnea, and bilateral Carpal Tunnel Syndrome.

Claimant had outpatient PT in September 2008 to help strengthen her legs. She reported on 10/02/08 that she was doing well, and her physical therapist noted that she tolerated all exercises well. A neurology follow up on 11/05/08 reports she has recurrent migraine headaches, chronic pain and numbness in all extremities, and bilateral CTS. She was encouraged to consider carpal tunnel release. A visual exam on 12/05/08 revealed VA corrected was OD 20/25; OS 20/25 and OU 20/20-2. There were no signs of diabetic retinopathy. Her diagnosis is Myopic astigmatic presbyope. An exam on 12/09/08 revealed the claimant has gained over 50# in the past year. Current medications are Metformin, Gemfibrozil, Lantus insulin, Humalin, Lyrica, Furosemide, Plavix, Lisinopril, Atenlol, pravastatin, lexapro, CPAP. She was alert, cooperative, pleasant and NAD. Lungs were clear, heart was RRR, normal bowel sounds, no cyanosis, clubbing or edema of extremities. She was neurologically intact. Sensory and motor were intact. These records also note the claimant has a history of CAD and is s/p acute coronary syndrome with two stents implanted in November 2007. A cervical MRI on 1/13/09 revealed DDD throughout the C-spine.

The opinion of [redacted] that claimant was temporarily disabled from 3/11/08 to 6/11/08, is an Issue Reserved to the Commissioner, however, this opinion has been considered in this evaluation.

The claimant's statements are considered to be partially credible. Although she has bilateral carpal tunnel syndrome, she remains able to use her hands and arms for ordinary activities. She has diabetes without evidence of end organ damage. She has normal strength and ROM of her extremities. Her heart and lungs are functioning satisfactorily. She has degenerative changes of the spine but is able to stand and walk without assistance. She uses a cane at times, but the evidence does not indicate that this is a medical necessity. The claimant should be able to perform work at the level described herein.' [redacted] 434 Spec. Code: 12
4/9/09

Signature

May 4, 2009, 11:26
PAGE 1

NH [redacted]

UNIT: DVTDVT

[redacted]

REQUEST FOR HEARING BY ADMINISTRATIVE LAW JUDGE

On May 1, 2009, we talked with you and completed your REQUEST FOR HEARING for SOCIAL SECURITY BENEFITS. We stored your REQUEST FOR HEARING information electronically in our records and attached a summary of your statements.

What You Need To Do

- Review your REQUEST FOR HEARING to ensure we recorded your statements correctly.
- If you agree with all your statements, you may retain the REQUEST FOR HEARING for your records.
- If you disagree with any of your statements, you should contact us within 10 days after the date of this notice to let us know.

MY NAME IS [redacted]

MY SOCIAL SECURITY NUMBER IS [redacted]

I REQUEST A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE. I DISAGREE WITH THE DETERMINATION MADE ON MY CLAIM FOR SSI DISABILITY/TITLE II BENEFITS BECAUSE I AM DISABLED

I AM SUBMITTING ADDITIONAL EVIDENCE WITH THIS REQUEST.

I WISH TO APPEAR AT A HEARING. I UNDERSTAND THAT AN ADMINISTRATIVE LAW JUDGE OF THE OFFICE OF DISABILITY ADJUDICATION AND REVIEW WILL BE APPOINTED TO CONDUCT THE HEARING OR OTHER PROCEEDINGS IN MY CASE. I ALSO UNDERSTAND THAT THE ADMINISTRATIVE LAW JUDGE WILL SEND ME NOTICE OF THE TIME AND PLACE OF A HEARING AT LEAST 20 DAYS BEFORE THE DATE SET FOR A HEARING.

IT COULD BE ESPECIALLY USEFUL IN MY CASE SINCE THE ADMINISTRATIVE LAW JUDGE WOULD HAVE AN OPPORTUNITY TO HEAR AN EXPLANATION AS TO HOW MY IMPAIRMENTS PREVENT ME FROM WORKING AND RESTRICT MY ACTIVITIES.

Permanent Subcommittee on Investigations
EXHIBIT #17d

NH [redacted]

I AM REPRESENTED BY [redacted] WHO IS AN ATTORNEY.

MY PHONE NUMBER IS [redacted]

DATE May 1, 2009.

[redacted]

Office Outpatient Visit
Visit Date: Thu, Jan 7, 2010 11:00 am to 11:55 am (Initial Individual Therapy)
Provider: [redacted]
Location: [redacted]

Electronically signed by [redacted] on 01/08/2010 12:25:49 PM
Printed on 01/08/2010 at 12:25 pm

SUBJECTIVE:

COLLECTED BY [redacted] DR PRE-SURGICAL PSYCHOLOGICAL ASSESSMENT PRIOR TO GASTRIC BYPASS SURGERY

HX: DIABETES, HYPERTENSION, HIGH CHOLESTEROL, HEART ATTACK WITH PLACEMENT OF STINTS, CONGESTIVE HEART FAILURE, DEGENERATIVE DISC DISEASE, ARTHRITIS, SLEEP APNEA, HEARTBURN/GERD, KIDNEY STONES, SKIN CANCER BY HISTORY

Chief Complaint/Reason for Visit/Brief History: 49 YEAR OLD CAUC FEMALE, MARRIED, TWICE AND DIVORCED TWICE, CURRENTLY LIVING WITH DIVORCED SPOUSE, THREE CHILDREN AGES 30, 32 AND 18.

SHE WAS BORN IN [redacted] AS [redacted] HER FATHER (DB) IS ALIVE AND HAS A MEDICAL HX OF HEART ATTACK. HER MOTHER IS (74) AND HAS A HISTORY OF DIABETES. SHE HAS 2 SIBLINGS AND 2 HAVE DIABETES. THERE IS NO CLEAR MENTAL HEALTH HISTORY IN THE FAMILY. [redacted] GRADUATED FROM HIGH SCHOOL AND WENT ON TO SOME COLLEGE STUDYING ACCOUNTING. SHE WAS PREGNANT AND GAVE BIRTH AT 17 [redacted]. SHE MARRIED THE CHILD'S FATHER [redacted] AND DIVORCED 5 YEARS LATER. SHE HAD A SECOND CHILD, [redacted] ABOUT THE TIME OF THE DIVORCE SHE HAD GESTATIONAL DIABETES DURING THIS PREGNANCY. A PRIMARY CAUSE OF THE DIVORCE WAS AN INJURY TO [redacted] CAUSING HEAD TRAUMA. "I GUESS WE BOTH BLAMED EACH OTHER."

SHE MOVED TO NEW YORK AND WORKED IN [redacted] AND BECAME INVOLVED IN THE A MAN NAMED [redacted]. THEY MOVED TOGETHER TO FLORIDA AND SHE WORKED FOR A YEAR AT A [redacted] JEF [redacted] AND MOVED BACK TO PENNSYLVANIA. SHE WENT TO WORK AT A COMPANY [redacted] SACKS AND BECAME INVOLVED WITH [redacted] AND EVENTUALLY THEY MARRIED. [redacted] HUSBAND [redacted] SUED HER FOR CUSTODY OF HER CHILDREN (10 AND 6) AND WON. SHE DESCRIBES THIS AS A PARTICULARLY HARD TIME IN HER LIFE EMOTIONALLY. GRADUALLY SHE FOUND OUT THAT [redacted] WAS INVOLVED IN ILLEGAL ACTIVITIES (BOOK MAKING) AND HAD ALCOHOL AND DRUG PROBLEMS WHICH LED TO THEIR SEPARATION AND DIVORCE AFTER HER THIRD CHILD. [redacted] WAS BORN. [redacted] WAS IN JAIL IN MICHIGAN FOR A YEAR WHILE THEY WERE SEPARATED IN 2001. CURRENTLY THEY ARE WORKING TOGETHER. SHE SAYS THAT HE IS CHANGED AND THAT HE IS WORKING STEADILY MANAGING A GROCERY STORE AND NOT USING DRUGS OR ALCOHOL.

WORK HX: AS MENTIONED PREVIOUSLY SHE WORKED IN NEW YORK AT A [redacted] DRY THEN IN FLORIDA FOR A YEAR AT A [redacted] SHE WORKED FOR [redacted] IN PENNSYLVANIA AND ALSO FOR [redacted] UNTIL SHE WAS LAID OFF. SINCE MOVING TO VIRGINIA IN 2001 SHE HAS NOT WORKED.

MEDICAL HISTORY: AS A CHILD SHE WAS HEALTHY BUT OVERWEIGHT TO SOME DEGREE. SHE SLIMMED DOWN AS A TEENAGER UNTIL SHE BECAME PREGNANT AT 17. SHE HAD MORE WEIGHT GAIN AFTER THE BIRTH OF HER SECOND CHILD. DURING HER ADULT LIFE SHE HAS BEEN OVERWEIGHT WEIGHING BETWEEN 195 AND 210 LBS AND BEING 5' 1" TALL. SHE WENT THROUGH VARIOUS DIETS AND WEIGHT LOSS PLANS AND WAS VERY SUCCESSFUL LOSING 40 LBS GOING TO LA WITH LOSS BUT PUT IT ALL BACK ON AFTER THE PROGRAM WAS OVER. SHE REPORTS THAT HER THYROID IS FUNCTIONAL, THAT SHE TRIES TO EAT SENSIBLY BUT CONTINUES TO GAIN WEIGHT UNCONTROLLABLY. PRESENTLY SHE WEIGHS 218 LBS WHICH IS THE MOST SHE HAS EVER WEIGHED. SHE HAS TROUBLE EXERCISING DUE TO DEGENERATIVE DISC DISEASE IN HER NECK AND SUBSEQUENT ARTHRITIC PAIN IN HER NECK AND SHOULDERS. SHE WALKS WITH A CANE DUE TO BOUTS OF FALLING DUE TO UNSTEADINESS AND WEAKNESS.

SHE HAD A HEART ATTACK IN 2007 AND WAS HOSPITALIZED AND 2 STINTS WERE PLACED. SUBSEQUENTLY SHE HAS BEEN THROUGH 2 ADDITIONAL HEART CATHETERIZATIONS. SHE HAS AN ONGOING HISTORY OF DIABETES, HYPERTENSION, CONGESTIVE HEART PROBLEMS, HIGH CHOLESTEROL, DEGENERATIVE DISC DISEASE, ARTHRITIS IN NECK AND SHOULDERS, SLEEP APNEA AND USES A CPAP MACHINE, HEARTBURN/GERD, A HX OF KIDNEY STONES, SKIN CANCER IN 2005 AND CURRENTLY HAS A BREAST LUMP WHICH IS SUSPICIOUS. SHE HAS A HISTORY OF APPENDECTOMY, C-SECTION X 3 AND

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[redacted]

Clinical Consultant visit
Visit Date: Thu, Jun 7, 2010 11:00 am to 11:55 am (New individual therapy)
Provider: [redacted]
Location: [redacted]

Electronically signed by: [redacted] on 01/06/2010 12:25:40 PM
Printed on 01/06/2010 at 12:25 pm

HYSTERECTOMY.

Current Problem: [redacted] REPORTS A HISTORY OF DEPRESSION GOING BACK TO HER SECOND DIVORCE. SHE HAS BEEN TAKING 10 MG FOR SEVERAL YEARS. THIS DEPRESSION IS PROBABLY DRIVEN OR AT LEAST EXACERBATED BY HER INCREASING LEVELS OF CHRONIC PAIN AND THE LOOMING THREAT OF HER MULTIPLE HEALTH PROBLEMS. SHE DENIES SUBSTANCE ABUSE OTHER THAN TOBACCO (1/2 PACK A DAY) AND UNDERSTANDS THAT SHE WILL BE REQUIRED TO ABSTAIN FROM SMOKING PRIOR TO HER SURGERY.

SHE WAS ASKED TO COMPLETE A BASIC PERSONALITY INVENTORY WHICH IS A 240 QUESTION TRUE FALSE FORMAT ASSESSMENT OF MENTAL HEALTH STATUS. HER RESPONSES CONFIRM HER REPORTED LEVEL OF DEPRESSION (T = 70). IT ALSO DEMONSTRATES CONCERNS RELATED TO HER HEALTH PROBLEMS (HYPOCHONDRIASIS (T = 70) AND ANXIETY RELATED ISSUES (T = 70). THE AREA OF GREATEST CONCERN IS INDICATED TO BE SOCIAL INTROVERSION WHICH COULD TRANSLATE INTO A LACK OF SOCIAL EMOTIONAL SUPPORT (T = 80). HER LOWEST OR MOST POSITIVE SCORES WERE IN THE AREA OF REPRESSION (T = 52), THINKING DISORDER (T = 50) AND SELF-DEPRECATION (T = 40).

SHE DISPLAYS A WILLINGNESS TO FOLLOW MEDICAL DIRECTIONS AND COMPLICATED MEDICATION ROUTINES. SHE HAS A GOOD SENSE OF THE RISKS AND THE REASONABLE BENEFITS OF THE SURGERY. HER LIFE STYLE DOES NOT DEMONSTRATE IMPULSIVITY PROBLEMS OR ROUTINELY POOR JUDGMENT.

Current Medications: METFORMIN 1000 MG BID; ACTOS 30 MG DAILY; HUMALOG 20-30 UNITS AT DINNER; NOVALOG 10-20 BEFORE MEALS; LANTUS 40 UNITS BID; ULTRAM ER 300 MG DAILY; GABAPENTIN 300 MG TID; ALBUTEROL 2 PUFFS PRN; ASPIRIN 81 MG DAILY; FLEXERIL 10 MG TID; ALEVE LIQUID GELS; FUROSEMIDE-LASIX 20 MG DAILY; ISOSORBIDE 30 MG DAILY; LISINOPRIL 5 MG DAILY; ATENOLOL 25 MG DAILY; PREVASTATIN 80 MG HS; LOPID 600 MG BID; LEXAPRO 10 MG DAILY; NASONEX PRN; PROGESTERONE-BIEST; PRILOSEC 20 MG DAILY; METAMUCIL 5.8 MG TID.

None

ASSESSMENT: [redacted] PRESENTS AS AN ACCEPTABLE CANDIDATE FOR GASTRIC BYPASS SURGERY. IF THERE ARE ANY QUESTIONS REGARDING THIS ASSESSMENT PLEASE DON'T HESITATE TO CONTACT ME.

[redacted]

293.83 Mood disorder due to MULTIPLE CHRONIC ILLNESS AND CHRONIC PAIN

ORDERS:

Procedures Ordered:
Psychiatric diagnostic interview examination

PLAN:

Mood disorder due to

Orders:
Psychiatric diagnostic interview examination

(The following is a transcript in the hearing held before Karen B. Peters, Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, on May 19, 2010, at Bristol, Virginia, in the case of [redacted] Social Security Number [redacted] The Claimant appeared in person and was represented by [redacted], Attorney. Also present was [redacted] Vocational Expert.)

(The hearing commenced at 11:24 a.m. on May 19, 2010.)

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

ALJ: Well, good morning [redacted] I'm Karen Peters, I'm the Administrative Law Judge. Counselor, do I need to go over the definition of disability in any preliminary matter?

ATTY: You don't, Your Honor. I waive reading of those.

ALJ: All right. Now, according to my notes, this lady applied July 11th of 2008. Her date last insured is 12/31/2012, so she's well within her insurance status. Let's look at our e-file index; we have through 4A, 12B, 5D, 13E and then the F section, 21F. The last notes being [redacted] (PHONETIC) of April 2010. Any objection to admitting the record, sir?

ATTY: I do not, Your Honor.

(Exhibits 1A through 21F , previously identified, were received into evidence and made a part of the record thereof).

ALJ: Let me state for the record that just before we went on record, we had a brief discussion -- or I had a brief discussion with counsel about the possibility of amending the onset in this case to this lady's 49-and-a-half birthday which is how far we can take a grid backwards. You would be 50 as of [redacted] of this year?

CLMT: Yes.

ALJ: So you just 49, [redacted] Okay, so if you move that six months, September, October, November, December, January -- so we're

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talking about March 19th of this year, that isn't going to give her much of a lump sum.

ATTY: Right.

ALJ: But, at least that gets us lined up with where the medical record is, I think. And the reason I'm trying to reach an agreement on this ma'am, is that we have a physical assessment, 17F, by a physician. A physician actually reviewed your record April 9th of 2010. He put you at a light exertional level. It seems to me that over time you've actually been getting worse so that -- you wouldn't disagree with that. And so it seems to me that some point in time, you along the way, probably have actually reached the sedentary exertional level. And the, the furthest back I can stretch it and meet the grid rules would be age 49-and-a-half, and that simplifies things for us and allows me to reach a decision more quickly and conclusively using that grid rule. But you are giving up a little bit of -- not a little bit -- you're giving up your onset date of July of '08 -- excuse me, your onset of November of '07 and moving it forward to March of '09. Are you satisfied with that result? Do you understand why we're trying to --

CLMT: Yes.

ALJ: -- to settle it that way?

CLMT: Yes.

ALJ: Okay. If you're satisfied with that ma'am, then I will find in your favor that you are at a sedentary exertional level, and that you could not return to your past work at a sedentary exertional level with some other limitations that you might have, and that

therefore you would fit that grid rule. Okay? Anything else sir?

ATTY: I think that's everything, Your Honor.

ALJ: All right. Thank you all so much, we appreciate your coming and we'll get a decision out to you as quickly as we can ma'am.

CLMT: Thank you.

ALJ: All right, thank you.

(The hearing closed at 11:28 a.m. on May 19, 2010.)

C E R T I F I C A T I O N

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded at the hearing held in the case of [redacted], before Administrative Law Judge Karen B. Peters.

Christy Little, Transcriber
Free State Reporting, Inc.

Caroline Musterman, Proofreader
Free State Reporting, Inc.

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability, Disability Insurance Benefits, and Supplemental Security Income
(Wage Earner)	[redacted] (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

This case is before the undersigned on a request for hearing dated May 1, 2009 (20 CFR 404.929 *et seq.* and 416.1429 *et seq.*). On May 19, 2010, the undersigned held a video hearing (20 CFR 404.936(c) and 416.1436(c)). The claimant appeared in Bristol, VA, and the undersigned presided over the hearing from Bristol, VA. [redacted] an impartial vocational expert, also appeared at the hearing. The claimant is represented by [redacted] an attorney.

At the hearing, the claimant and her representative amended the alleged onset date of disability from November 6, 2007 to March 19, 2010, which is within 6 months of the claimant s 50th birthday.

ISSUES

The issue is whether the claimant is disabled under sections 216(i), 223(d) and 1614(a)(3)(A) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

With respect to the claim for a period of disability and disability insurance benefits, there is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant s earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2012. Thus, the claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful review of the entire record, the undersigned finds that the claimant has been disabled from March 19, 2010, through the date of this decision. The undersigned also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

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APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, or work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is severe or a combination of impairments that is severe (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. If the claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant s impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant s impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant s residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual s residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the undersigned must consider all of the claimant s impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f) and 416.920(f)). If the claimant has the residual functional capacity to do her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the undersigned must determine whether the claimant is able to do any other work considering her

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residual functional capacity, age, education, and work experience. If the claimant is able to do other work, she is not disabled. If the claimant is not able to do other work and meets the duration requirement, she is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g), 404.1560(c), 416.912(g) and 416.960(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, the undersigned makes the following findings:

1. The claimant s date last insured is December 31, 2012.

2. The claimant has not engaged in substantial gainful activity since March 19, 2010, the amended alleged onset date (20 CFR 404.1520(b), 404.1571 *et seq.*, 416.920(b) and 416.971 *et seq.*).

3. The claimant has the following severe impairments: morbid obesity, diabetes mellitus, diabetic neuropathy, cervical degenerative disc disease, status post bilateral carpal tunnel release surgery, status post myocardial infarction, gastroesophageal reflux disease (GERD), and depress

On April 9, 2009, [redacted], reviewed the claimant s evidence in file and assessed her as able to perform light work (Exhibit 17F). [redacted] the claimant had been diagnosed with chronic lower back pain, chronic numbness and pain of her lower extremities, which was due to diabetic neuropathy and degenerative disc disease, chronic pain and numbness in the upper extremities due to carpal tunnel syndrome, chronic polyarthralgias, and obstructive sleep apnea.

On March 15, 2010, [redacted] performed a checkup on the claimant for an episode of syncope (Exhibit 27F-8). [redacted] the claimant s past medical history included coronary artery disease, status post stent placement in November 2007, hyperlipidemia, hypertension, myocardial infarction x 2, sleep apnea, renal stones, diabetes mellitus type II, and carpal tunnel syndrome. On physical examination, the claimant was 61 inches tall and weighed 230 pounds.

4. The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).

5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform the full range of sedentary work as defined in 20 CFR 404.1567(a) and 416.967(a).

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In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and 416.929 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and 416.927 and SSRs 96-2p, 96-6p and 06-3p.

After considering the evidence of record, the undersigned finds that the claimant s medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the claimant s statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The State agency medical consultants physical assessments are given little weight because evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants.

6. The claimant is unable to perform any past relevant work (20 CFR 404.1565 and 416.965).

The demands of the claimant s past relevant work exceed the residual functional capacity.

7. Applying the age categories non-mechanically, and considering the additional vocational adversities in this case, the claimant was an individual closely approaching advanced age on the established disability onset date (20 CFR 404.1563 and 416.963).

8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564 and 416.964).

9. The claimant s acquired job skills do not transfer to other occupations within the residual functional capacity defined above (20 CFR 404.1568 and 416.968).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c), 404.1566, 416.960(c), and 416.966).

In determining whether a successful adjustment to other work can be made, the undersigned must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11).

Based on a residual functional capacity for the full range of sedentary work, considering the claimant s age, education, and work experience, a finding of disabled is directed by Medical-Vocational Rule 201.14.

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11. The claimant has been under a disability as defined in the Social Security Act since March 19, 2010, the amended alleged onset date of disability (20 CFR 404.1520(g) and 416.920(g)).

DECISION

Based on the application for a period of disability and disability insurance benefits protectively filed on July 8, 2008, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act since March 19, 2010.

Based on the application for supplemental security income protectively filed on July 8, 2008, the claimant has been disabled under section 1614(a)(3)(A) of the Social Security Act since March 19, 2010.

The component of the Social Security Administration responsible for authorizing supplemental security income will advise the claimant regarding the nondisability requirements for these payments and, if the claimant is eligible, the amount and the months for which payment will be made.

/s/ Karen B. Peters

Karen B. Peters
Administrative Law Judge

May 28, 2010
Date

DuPlEx

Social Security Administration

Retirement, Survivors, and Disability Insurance

Notice of Disapproved Claim

Date: August 29, 2006
Claim Number [redacted]

[redacted]

We are writing about your claim for Social Security disability benefits. Based on a review of your health problems you do not qualify for benefits on this claim. This is because you are not disabled under our rules.

We have enclosed information about the disability rules.

About The Decision

Doctors and other trained staff looked at your case and made this decision. They work for your State but used our rules.

Please remember that there are many types of disability programs, both government and private, which use different rules. A person may be receiving benefits under another program and still not be entitled under our rules. This may be true in your case.

How We Made The Decision

All relevant reports were requested and the following evidence was used to decide your claim.

[redacted]D report received 07/05/2006
[redacted]MD report received 06/16/2006
[redacted]eport received 07/27/2006
[redacted] report received 06/05/2006 and 06/22/2006
[redacted]k report received 06/22/2006
[redacted] report received 08/02/2006
[redacted] reports received 05/30/2006 and 06/09/2006

We have determined that your condition is not severe enough to keep you from working. We considered the medical and other information, your age, education, training, and work experience in determining how your condition affects your ability to work.

You said that you are unable to work because of severe back and leg pain, nerve problems, numbness, insomnia due to pain, and bulging disc.

The evidence shows that your conditions have caused you some limitations in your ability to function. However, evidence shows that despite having back and leg pain and numbness, you are able to stand, walk, move about, and use your arms and hands within an adequate range. While your insomnia may be bothersome, this condition is not so severe as to be considered totally disabling. Although you may occasionally feel nervous and depressed, you are able to understand, remember, cooperate with others, and perform your normal daily tasks.

We realize that your condition keeps you from doing the type of work that you have done in the past, but it does not keep you from doing less demanding work

[redacted]

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If your condition gets worse and keeps you from working, write, call or visit any Social Security office about filing another application.

If You Disagree With The Decision

If you disagree with this decision, you have the right to appeal. We will review your case and consider any new facts you have. A person who did not make the first decision will decide your case.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you get this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.
- You have to ask for an appeal in writing. We will ask you to sign a form SSA-561-U2, called "Request for Reconsideration." You may request this form online at: http://www.socialsecurity.gov/online/ssa-561.pdf. Contact one of our offices if you want help.
- In addition, you have to complete a "Reconsideration Disability Report" to tell us about your medical condition since you filed your claim. You may contact one of our offices or call 1-800-772-1213 to request this form. Or, you may complete this report online at http://www.socialsecurity.gov/disability/recon.

Please read the enclosed pamphlet, "Your Right to Question the Decision Made on Your Social Security Claim." It contains more information about the appeal.

New Application

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with this decision and you file a new application instead of appealing:

- you might lose some benefits, or not qualify for any benefits, and
- we could deny the new application using this decision, if the facts and issues are the same.

So, if you disagree with this decision, you should ask for an appeal within 60 days.

If You Want Help With Your Appeal

You can have a friend, lawyer, or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due Social Security benefits to pay toward the fee.

Other Benefits

Based on the application you filed, you are not entitled to any other benefits, besides those you may already be getting. In the future, if you think you may be entitled to other benefits you will need to apply again.

If You Have Any Questions

If you have any questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at the number shown below. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

SSA - BLUEFIELD
3014 E CUMBERLAND RD
BLUEFIELD, WV 24701

304 327-7671

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly.

Laurie Watkins
Regional Commissioner

Enclosures:
SSA Pub. No. 05-10058
Disability Rules Factsheet

CC: [redacted]

[redacted]

DuPlEx

Social Security
Notice of Reconsideration

From: Social Security Administration

Date: April 4, 2007
Claim Numbe[redacted]

[redacted]

Upon receipt of your request for reconsideration we had your claim independently reviewed by a physician and disability examiner in the State agency which works with us in making disability determinations. The evidence in your case has been thoroughly evaluated; this includes the medical evidence and the additional information received since the original decision. We find that the previous determination denying your claim was proper under the law. The last page of this notice identifies the legal requirements for your type of claim.

The determination on your claim was made by an agency of the State. It was not made by your own doctor or by other people or agencies writing reports about you. However, any evidence they gave us was used in making this determination. Doctors and other people in the State agency who are trained in disability evaluation reviewed the evidence and made the determination based on Social Security law and regulations.

If you believe that the reconsideration determination is not correct, you may request a hearing before an administrative law judge of the Office of Hearings and Appeals. If you want a hearing, you must request it not later than 60 days from the date you receive this notice. You may make your request through any Social Security office. As part of the appeal process, you also need to tell us about your current medical condition. We provide a form for doing that, the Disability Report – Appeal. You may contact one of our offices or call 1-800-772-1213 to request this form. Or, you may complete the report online at http://www.socialsecurity.gov/disability/hearing. Read the enclosed leaflet for a full explanation of your right to appeal. If you do not request a hearing of your case within the prescribed time period, you still have the right to file another application at any time.

How We Made the Decision

The following evidence was considered in evaluating your claim in addition to the medical reports already in file.

[redacted] report received 03/06/2007
[redacted]S report received 03/09/2007
[redacted] report received 03/20/2007
[redacted] report received 03/13/2007
[redacted]3 report received 03/30/2007
[redacted] report received 02/12/2007

We have determined that your condition is not severe enough to keep you from working. We considered the medical and other information, your age, education, training, and work experience in determining how your condition affects your ability to work.

You said that you are unable to work because of severe back and leg pain,.numbness, insomnia due to pain, bulging disc; nerves. depression, problems with memory and concentration..

The evidence shows that while you experience some restrictions as a result of your back and leg pain and numbness, you are able to perform some limited standing and walking should be able to perform work activities that do not require an excessive amount of these activities. Although you report difficulties with your nerves resulting in insomnia,

[redacted]

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problems with your memory and concentrating, evidence shows that you continue to be able to act, think and communicate in your own interest.

We realize that your condition keeps you from doing the type of work that you have done in the past, but it does not keep you from doing less demanding work.

If You Want Help With Your Appeal

You can have a friend, lawyer, or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due Social Security benefits to pay toward the fee.

New Application

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with this decision and you file a new application instead of appealing:

- you might lose some benefits, or not qualify for any benefits, and
- we could deny the new application using this decision, if the facts and issues are the same.

So, if you disagree with this decision, you should ask for an appeal within 60 days.

This decision refers only to your claim for benefits under the Social Security Disability Insurance Program. If you applied for other benefits, you will receive a separate notice when a decision is made on that claim(s).

If you have questions about your claim, you should get in touch with any Social Security office.. Most questions can be handled by telephone or mail. If you visit an office, however, please take this letter with you.

Summarized below are legal requirements for the various types of disability claims:

Disability Insurance Claim

To be considered disabled, a person must be unable to do any substantial gainful work due to a medical condition which has lasted or is expected to last for at least 12 months in a row. The condition must be severe enough to keep a person from working not only in his or her usual job, but in any other substantial gainful work. We look at the person's age, education, training and work experience when we decide whether he or she can work.

Disabled Widow (Widower) Claim

A widow, widower, or surviving divorced wife (age 50-60) must meet the disability requirement of the law within a specified 7-year period.. A person may be considered disabled only if he or she has a physical or mental impairment that is so severe as to ordinarily prevent a person from working. The disability must have lasted or be expected to last for a continuous period of at least 12 months.

Child Disability Benefits

Childhood disability benefits may be paid to a person age 18 or older if the person has a disability which began before age 22 or within 84 months of the end of an earlier period of childhood disability. The condition, whether physical or mental, must be severe enough to keep the person from doing any substantial gainful work. We look at the person's age, education and previous training when we decide whether he or she can work. In addition, the condition must have lasted or be expected to last for at least 12 months in a row.

Laurie Watkins
Regional Commissioner

Enclosure:
SSA Pub. No. 70-10281
SSA-L928

SiMpLeX

[redacted]

Physical Therapy • Occupational Therapy

FUNCTIONAL CAPACITY EVALUATION
SAPLING GROVE REHABILITATION SERVICES

PATIENT: [redacted]
DATE: 09/26/2006
MRN: [redacted]
DOB: [redacted]
EMPLOYER: [redacted]
JOB TITLE: Mechanic
PHYSICIAN: [redacted]
DIAGNOSIS: Lumbar degenerative disc disease and lumbar spondylosis with myelopathy
CASE MANAGER: [redacted]

GENERAL INFORMATION

HISTORY: This alert, oriented, and cooperative 35 year-old white male was referred to [redacted] a Functional Capacity Evaluation by [redacted] The patient states he was injured at work on 08/25/05 when he was lifting a mining jack. He states he felt a pop in his back with immediate onset of pain, which became more severe over the next 2-3 days. He has undergone epidural steroid injections x2 without improvement as well as facet joint injections x3 without improvement. He has been off work since 08/26/05.

SUBJECTIVE: The patient currently rates his pain at 7 of 10. He describes the pain as constant in the lower back bilaterally radiating into the hips with constant pain in the left lower extremity to the knee. He reports occasional tingling in the feet bilaterally, left greater than right as well as occasional pain in the right lower extremity which he indicates is not as severe as the left. It should be noted that he drove approximately 1 ½ hours to the clinic this morning and last took his pain medication at approximately 8:00 a.m. Start of the evaluation was 10:00 a.m.

PAST MEDICAL HISTORY: The patient denies any other medical problems. He denies any significant prior injury to his current complaints.

JOB TITLE: [redacted] The patient states that his job required frequent lifting, pushing, pulling, bending, stooping, and reaching of various weights occasionally heavy. He states he has been off work since the day after the injury on 08/26/05.

Permanent Subcommittee on Investigations
EXHIBIT #18c

Name [redacted]
Date: 09/28/2006

MUSCULOSKELETAL ASSESSMENT

INITIAL VITAL SIGNS:
Height: 5'11".
Weight: 217 pounds.
Blood pressure: 140/80.
Heart rate: 64 bpm.
Pain Rating: 6/10.

TRUNK RANGE OF MOTION: Using goniometric technique, the patient demonstrates the following range of motion:

Flexion	48°
Extension to neutral	
Right side bending	15°
Left side bending	20°

He reports pain primarily with flexion, but also has pain with all other movements.

CERVICAL RANGE OF MOTION: Using goniometric technique, the patient demonstrates active range of motion as follows:

Flexion	45°
Extension	30°
Rotation right	55°
Rotation left	55°

No specific complaints of pain with movement.

UPPER EXTREMITY RANGE OF MOTION: Using goniometric technique, the patient demonstrates active range of motion of both upper extremities grossly within normal limits with the exception of shoulder flexion and abduction, which was limited to approximately 120° due to low back pain.

LOWER EXTREMITY RANGE OF MOTION: Using goniometric technique, the patient demonstrates active range of motion of both lower extremities grossly within normal limits with the exception of bilaterally hip flexion which was limited to 80° in the sitting position due to low back pain.

MANUAL MUSCLE TESTING: In the upper extremities, the patient demonstrates gross 5/5 strength with myotome testing although he does complain of pain with resisted shoulder flexion and abduction. Lower extremity strength measures as follows:

Right hip flexion	4+/5 with low back pain
Left hip flexion	3/5 with low back pain
Right knee flexion	5/5
Left knee flexion	4+/5
Knee extension	5/5 bilaterally
Left dorsiflexion	4-/5

Bilateral plantar flexion 3/5 (the patient was unable to perform bilateral heel raise)

NEUROLOGICAL: Reflexes are 2+ in bilaterally lower extremities at the knees and the ankles. The patient does report a slight decrease in sensation in the left foot along the bottom; however, no specific dermatome.

GAIT: The patient ambulates with a stooped somewhat flexed posture at the waist and the hips with a limp on the left. However, he does not utilize an assistive device.

GENERAL OBSERVATIONS: The patient appears to be in acute distress frequently shifting his position, sitting and standing frequently, rubbing his leg. When sitting, he sits on either hip not symmetrically as well as leans on his upper extremities.

PALPATION: The patient is moderately tender in bilateral lumbar paraspinals as well as along the PSIS. Moderate tenderness with palpation of the central spine along L5-S1 area.

SPECIAL TESTS: Utilizing Waddell's Non-organic physical signs of low back pain, the patient tested positive in 1 of 5 categories which included simulation test (positive for axial loading). Other tests performed include straight leg raising which was positive at approximately 60° for low back pain, negative for neurological symptoms. Sitting straight leg raise was positive for low back pain.

OBJECTIVE FUNCTIONAL ASSESSMENT

HANDGRIP STRENGTH TEST: The patient's static handgrip strength was assessed using the handheld dynamometer in position 3 for three trials with results as follows:

Setting	Right	Left
1	41 pounds	20 pounds
2	22 pounds	44 pounds
3	25 pounds	44 pounds

COMMENTS: The patient is right hand dominant. The values demonstrated a coefficient of variation greater than the acceptable 15% level suggesting an invalid test score and poor or inconsistent effort on the patient's part.

MULTI-POSITION HANDGRIP STRENGTH TEST: The patient's static handgrip strength was assessed using the handheld dynamometer at five positions with results as follows:

Setting	Right	Left
1	30 pounds	20 pounds
2	32 pounds	40 pounds
3	50 pounds	48 pounds
4	37 pounds	30 pounds
5	29 pounds	25 pounds

Page 4
Functional Capacity Evaluation

Name: [redacted]
Date: 09/26/2006

COMMENTS: The values demonstrated form the expected Bell shaped curve when these are plotted on a graph suggesting a valid effort.

RAPID EXCHANGE GRIP TEST: The patient was tested in position 3 on a handheld dynamometer for both hands to assess what he could maximally perform and compare it to his one time maximum strength value from above. He performed 8 repetitions to each hand while the evaluator rapidly moved the dynamometer to each hand. He demonstrated a maximum value on the right hand of 47 pounds and 40 pounds on the left hand. This would demonstrate a correlation between static grip strength testing and rapid exchange grip.

MATERIAL HANDLING ACTIVITIES:

(lb)	Occasional	Frequent	Constant
Lifting -- Floor to knuckle preferred	Unable to perform.		
Floor to knuckle leg lift	Unable to perform.		
12 in. To knuckle back lift	Unable to perform.		
Knuckle to shoulder	7.5 lbs.	3.75 lbs.	1.9 lbs.
Shoulder to overhead	7.5 lbs.	3.75 lbs.	1.9 lbs.
Carrying (50 feet)	Unable to perform.		
Pushing (25 feet)	50 lbs.	25 lbs.	12.5 lbs
Pulling (25 feet)	Unable to perform. The patient was unable to walk backwards reporting increasing numbness in the left lower extremity. Test was discontinued.		
Right Unilateral Lift	Unable to perform.		
Right Unilateral Lift	Unable to perform.		

COMMENTS: With the lifting test, the patient was unable to perform a squat or forward bend at the trunk enough to reach the box with the exception of 12 inches to knuckle at which point he was able to reach the box, but unable to lift the minimum weight which was 7.5 pounds due to pain. The patient rated his pain level as a 7 of 10 at the beginning of material handling activities getting as high as 10 of 10 toward the end of material handling. He did request rest breaks and indicated that he needed to sit down feeling lightheaded following the lower level lifts. The patient did make an effort to attempt the lifts; however, was not able to perform.

The data suggests that the patient is capable of performing the above lifting capacities. However, he could have perhaps lifted more than the values listed above, but due to increasing complaints of pain, change in symptoms, and altered body mechanics, we did not proceed further than the particular values noted above.

Projected values regarding the patient's ability to perform the above mentioned tasks on a frequent or constant basis are calculated by taking the approximate 50% of the values in the previous column.

Page 5
Functional Capacity Evaluation

Name: [redacted]
Date: 09/28/2006

NONMATERIAL HANDLING ACTIVITIES:

	Never	Occasional	Frequent	Constant
Reaching:		X		
Sitting:		X		
Standing: (up to 2 hours at a time)		X		
Walking: (up to 2 hours at a time)		X		
Fingering:				X
Repetitive Bending:	X			
Kneeling:	X			
Static Squat/Crouch:	X			
Repetitive Squat:	X			
Alternate Arm and Leg Movements:		X		
Crawling:	X			
Stair Climbing:		X		

COMMENTS: It should be noted the patient attempted all activities; however, when performing kneeling and squatting the patient was able to get into the position, but required assistance to get out of the position. Sitting was observed to be 15 minutes or less before changing positions or requesting to stand. Standing was again 15 to 20 minutes before requesting to sit. With walking, the patient ambulated very slowly with a limp on the left. With stair climbing, the patient took 2 minutes and 20 seconds to ascend and descend 12 steps which normally takes less than 30 seconds for the average individual. With climbing the steps, he performed a step-to pattern leading with the left lower extremity and requiring significant upper extremity support.

PAIN/FUNCTION QUESTIONNAIRES: In conjunction with the Functional Capacity Evaluation, the patient completed a series of pain/function questionnaires also for the purpose of assessing the presence and degree of inappropriate illness behavior. The patient scored positive in 12 out of 14 categories, which suggests a high level of inappropriate illness behavior from a subjective standpoint.

OBSERVATIONS AND RECOMMENDATIONS

1. The values given appear to be valid and objectively did not present with symptom magnification or inappropriate illness behavior; however, test questionnaire indicated high levels of inappropriate illness behavior.
2. The patient's activities qualify him for a sedentary physical demand level of work based on the U.S. Department of Labor Standards as outlined in the Dictionary of Occupational Titles.
3. Refer the patient back to ———— with the findings of this Functional Capacity Evaluation in order to establish his work capabilities and restrictions therein.

Name: [redacted]
Date: 09/26/2006

4. Based on the objective findings of the Functional Capacity Evaluation it would appear that the patient could not return to work at this time. With observed demonstration of the inability to sit greater than 15 minutes or stand greater than 15 minutes, the patient would be ineffective in an office situation. However, this decision as always is left to the discretion and judgment of the referring physician based on his assessment and the data from the patient's Functional Capacity Evaluation.

This evaluator can only hope that the findings of this evaluation will help aid the physician, the patient, the employer, and the Case Manager in the resolution of this case, or at least provide information to help aid this individual in other employment opportunities for this individual.

If I can be of further assistance, please do not hesitate to contact me. Thank you very much, [redacted] for the referral of this nice gentleman.

Sincerely,

[redacted]

NYH/alb
cc: [redacted]

ENCOUNTER SUMMARY
New Work Comp

Patient Name: [redacted]
Chart No: [redacted]
Phone: [redacted]
Age: 35 yrs
General Notes: [redacted]

Date: 02/07/2007
Doctor of Record: [redacted]
Examiner: [redacted]

NAME: [redacted]
CHART: [redacted]

DATE: 02-07-07

The patient continues to have back and left leg referred pain. The patient was managed [redacted] I [redacted] I contemplated a fusion and I concur that this was a reasonable option. The patient declined surgery and continues to decline surgery as of this day's date. He has already undergone a FCE. He is therefore by definition at MMI. He can return to work tomorrow with restrictions as outlined per FCE. His Lorcet prescription is converted to Lortab 7.5 mg t.i.d. #90, one p.o. t.i.d. p.r.n. with six month refill. Those can be renewed through this office or I would prefer through Southeastern Pain Management. I do not see any reason what so ever to escalate or increase his narcotic requirement and do believe that he should be referred to a pain management group so they can wean him from Lortab to anti-inflammatories over-the-counter alone.

His physical examination demonstrates a positive straight leg raise on the left. He does have the suggestion of anterior column failure on the right. He has no motor or sensory deficits. He has no calf atrophy. He does have some increased hamstring tonicity. No spasm is identified although some tenderness is subjectively reported to palpation at caudal L5-S1 level.

DIAGNOSIS: 722.52.

Return visit here is to be p.r.n. Per Virginia Work Comp standard and review of AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, the patient would have 0% impairment.

Dictated but not edited by: [redacted]

CC: [redacted]

MPL/jaj

DD: 02-07-07 DT: 02-09-07

Permanent Subcommittee on Investigations
EXHIBIT #18d

Form Approved
OMB No. 0960-0413

PSYCHIATRIC REVIEW TECHNIQUE

Na[redacted]	SS[redacted]
NH (If different from above)	SSN

I. MEDICAL SUMMARY

A. Assessment is from: 8/25/05 to Present

B. Medical Disposition(s):

1. ☐ No Medically Determinable Impairment
2. ☒ Impairment(s) Not Severe
3. ☐ Impairment(s) Severe But Not Expected to Last 12 Months
4. ☐ Meets Listing (Cite Listing)
5. ☐ Equals Listing (Cite Listing)
6. ☐ RFC Assessment Necessary
7. ☐ Coexisting Nonmental Impairment(s) that Requires Referral to Another Medical Specialty
8. ☐ Insufficient Evidence

C. Category(ies) Upon Which the Medical Disposition is Based:

1. ☐ 12.02 Organic Mental Disorders
2. ☐ 12.03 Schizophrenic, Paranoid and Other Psychotic Disorders
3. ☒ 12.04 Affective Disorders
4. ☐ 12.05 Mental Retardation
5. ☒ 12.06 Anxiety-Related Disorders
6. ☐ 12.07 Somatoform Disorders
7. ☐ 12.08 Personality Disorders
8. ☐ 12.09 Substance Addiction Disorders
9. ☐ 12.10 Autism and Other Pervasive Developmental Disorders

☒ **These findings complete the medical portion of the disability determination.**

MC/PCs Signature	Date 4/4/2007
MC/PCs Printed Name	Code 38

Form SSA-2506-BK (9-2000)
Destroy Prior Editions

Permanent Subcommittee on Investigations
EXHIBIT #18e

II. DOCUMENTATION OF FACTORS THAT EVIDENCE THE DISORDER

A. 12.02 Organic Mental Disorders

☐ Psychological or behavioral abnormalities associated with a dysfunction of the brain... as evidenced by at least one of the following:

1. ☐ Disorientation to time and place
2. ☐ Memory impairment
3. ☐ Perceptual or thinking disturbances
4. ☐ Change in personality
5. ☐ Disturbance in mood
6. ☐ Emotional lability and impairment in impulse control
7. ☐ Loss of measured intellectual ability of at least 15 IQ points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of the impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

B. 12.03 Schizophrenic, Paranoid and Other Psychotic Disorders

☐ Psychotic features and deterioration that are persistent (continuous or intermittent), as evidenced by at least one of the following:

1. ☐ Delusions or hallucinations
2. ☐ Catatonic or other grossly disorganized behavior
3. ☐ Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
   a. ☐ Blunt affect, or
   b. ☐ Flat affect, or
   c. ☐ Inappropriate affect
4. ☐ Emotional withdrawal and/or isolation

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment.

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

C. 12.04 Affective Disorders

☐ Disturbance of mood, accompanied by a full or partial manic or depressive syndrome, as evidenced by at least one of the following:

1. ☐ Depressive syndrome characterized by at least four of the following:
   - a. ☐ Anhedonia or pervasive loss of interest in almost all activities, or
   - b. ☐ Appetite disturbance with change in weight, or
   - c. ☐ Sleep disturbance, or
   - d. ☐ Psychomotor agitation or retardation, or
   - e. ☐ Decreased energy, or
   - f. ☐ Feelings of guilt or worthlessness, or
   - g. ☐ Difficulty concentrating or thinking, or
   - h. ☐ Thoughts of suicide; or
   - i. ☐ Hallucinations, delusions or paranoid thinking
2. ☐ Manic syndrome characterized by at least three of the following:
   - a. ☐ Hyperactivity, or
   - b. ☐ Pressures of speech, or
   - c. ☐ Flight of ideas, or
   - d. ☐ Inflated self-esteem, or
   - e. ☐ Decreased need for sleep, or
   - f. ☐ Easy distractibility, or
   - g. ☐ Involvement in activities that have a high probability of painful consequences which are not recognized, or
   - h. ☐ Hallucinations, delusions or paranoid thinking
3. ☐ Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)

☒ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above

Disorder **TP trtmnt for depresison**

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment (explain in Part IV, Consultant's Notes, if necessary):

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

D. 12.05 Mental Retardation

☐ Significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22, with one of the following:

1. ☐ Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow instructions such that the use of standardized measures of intellectual functioning is precluded*
2. ☐ A valid verbal, performance, or full scale IQ of 59 or less*
3. ☐ A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function*
4. ☐ A valid verbal, performance, or full scale IQ of 60 through 70*

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment.

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

*NOTE: Items 1, 2, 3, and 4 correspond to listings 12.05A, 12.05B, 12.05C, and 12.05D, respectively.

E. 12.06 Anxiety-Related Disorders

☐ Anxiety as the predominant disturbance or anxiety experienced in the attempt to master symptoms, as evidenced by at least one of the following:

1. ☐ Generalized persistent anxiety accompanied by three of the following:
   - a. ☐ Motor tension, or
   - b. ☐ Autonomic hyperactivity, or
   - c. ☐ Apprehensive expectation, or
   - d. ☐ Vigilance and scanning
2. ☐ A persistent irrational fear of a specific object, activity or situation which results in a compelling desire to avoid the dreaded object, activity, or situation
3. ☐ Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror, and sense of impending doom occurring on the average of at least once a week
4. ☐ Recurrent obsessions or compulsions which are a source of marked distress
5. ☐ Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress

☒ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder **TP trtmt for anxiety**

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

F. 12.07 Somatoform Disorders

☐ Physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms, as evidenced by at least one of the following:

1. ☐ A history of multiple physical symptoms of several years duration beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly

2. ☐ Persistent nonorganic disturbance of one of the following:

   a. ☐ Vision, or

   b. ☐ Speech, or

   c. ☐ Hearing, or

   d. ☐ Use of a limb, or

   e. ☐ Movement and its control (e.g., coordination disturbances, psychogenic seizures, akinesia, dyskinesia), or

   f. ☐ Sensation (e.g., diminished or heightened)

3. ☐ Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

G. 12.08 Personality Disorders

☐ Inflexible and maladaptive personality traits which cause either significant impairment in social or occupational functioning or subjective distress, as evidenced by at least one of the following:

1. ☐ Seclusiveness or autistic thinking
2. ☐ Pathologically inappropriate suspiciousness or hostility
3. ☐ Oddities of thought, perception, speech and behavior
4. ☐ Persistent disturbances of mood or affect
5. ☐ Pathological dependence, passivity, or aggressivity
6. ☐ Intense and unstable interpersonal relationships and impulsive and damaging behavior

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

H. 12.09 Substance Addiction Disorders

☐ Behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.

If present, evaluate under one or more of the most closely applicable listings:

1. ☐ Listing 12.02—Organic mental disorders*
2. ☐ Listing 12.04—Affective disorders*
3. ☐ Listing 12.06—Anxiety-related disorders*
4. ☐ Listing 12.08—Personality disorders*
5. ☐ Listing 11.14—Peripheral neuropathies*
6. ☐ Listing 5.05—Liver damage*
7. ☐ Listing 5.04—Gastritis*
8. ☐ Listing 5.08—Pancreatitis*
9. ☐ Listing 11.02 or 11.03—Seizures*

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

*NOTE: Items 1, 2, 3, 4, 5, 6, 7, 8, and 9 correspond to listings 12.09A, 12.09B, 12.09C, 12.09D, 12.09E, 12.09F, 12.09G, 12.09H, and 12.09I, respectively. If items 1, 2, 3, or 4 are checked, only the numbered items in subsections IIA, IIC, IIE, or IIG of the form need be checked. The first block under the disorder heading in those subsections should not be checked, unless the evidence substantiates the presence of the disorder separate from the substance addiction disorder.

I. 12.10 Autistic Disorder and Other Pervasive Developmental Disorders

☐ Qualitative deficits in the development of reciprocal social interaction, in the development of verbal and nonverbal communication skills, and in imaginative activity. Often there is a markedly restricted repertoire of activities and interests, which frequently are stereotyped and repetitive.

1. ☐ Autistic disorder, with medically documented findings of all of the following:
   a. ☐ Qualitative deficits in reciprocal social interaction
   b. ☐ Qualitative deficits in verbal and nonverbal communication and in imaginative activity
   c. ☐ Markedly restricted repertoire of activities and interests
2. ☐ Other pervasive developmental disorders, with medically documented findings of both of the following:
   a. ☐ Qualitative deficits in reciprocal social interaction
   b. ☐ Qualitative deficits in verbal and nonverbal communication and in imaginative activity

☐ A medically determinable impairment is present that does not precisely satisfy the diagnostic criteria above.

Disorder

Pertinent symptoms, signs, and laboratory findings that substantiate the presence of this impairment:

☐ Insufficient evidence to substantiate the presence of the disorder (explain in Part IV, Consultant's Notes).

III. RATING OF FUNCTIONAL LIMITATIONS

A. "B" Criteria of the Listings

Indicate to what degree the following functional limitations (which are found in paragraph B of listings 12.02-12.04, 12.06-12.08 and 12.10 and paragraph D of 12.05) exist as a result of the individual's mental disorder(s).

NOTE: Item 4 below is more than a measure of frequency and duration. See 12.00C4 and also read carefully the instructions for this section.

Specify the listing(s) (i.e., 12.02 through 12.10) under which the items below are being rated 12.04, 12.06

FUNCTIONAL LIMITATION	DEGREE OF LIMITATION					
1. Restriction of Activities of Daily Living	None ☐	Mild ☒	Moderate ☐	Marked* ☐	Extreme* ☐	Insufficient Evidence ☐
2. Difficulties in Maintaining Social Functioning	None ☒	Mild ☐	Moderate ☐	Marked* ☐	Extreme* ☐	Insufficient Evidence ☐
3. Difficulties in Maintaining Concentration, Persistence, or Pace	None ☐	Mild ☒	Moderate ☐	Marked* ☐	Extreme* ☐	Insufficient Evidence ☐
4. Repeated Episodes of Decompensation, Each of Extended Duration	None ☒	One or Two ☐		Three* ☐	Four* or More ☐	Insufficient Evidence ☐

*Degree of limitation that satisfies the functional criterion.

B. "C" Criteria of the Listings

1. Complete this section if 12.02 (Organic Mental), 12.03 (Schizophrenic, etc.), or 12.04 (Affective) applies and the requirements in paragraph B of the appropriate listing are not satisfied.

NOTE: Item 1 below is more than a measure of frequency and duration. See 12.00C4 and also read carefully the instructions for this section.

☐ Medically documented history of a chronic organic mental (12.02), schizophrenic, etc. (12.03), or affective (12.04) disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do any basic work activity, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. ☐ Repeated episodes of decompensation, each of extended duration

2. ☐ A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate

3. ☐ Current history of 1 or more years' inability to function outside a highly supportive living arrangement with an indication of continued need for such an arrangement

☒ Evidence does not establish the presence of the "C" criteria

☐ Insufficient evidence to establish the presence of the "C" criteria (explain in Part IV, Consultant's Notes).

2. Complete this section if 12.06 (Anxiety-Related) applies and the requirements in paragraph B of listing 12.06 are not satisfied.

☐ **Complete** inability to function independently outside the area of one's home

☒ Evidence does not establish the presence of the "C" criteria

☐ Insufficient evidence to establish the presence of the "C" criterion (explain in Part IV, Consultant's Notes).

IV.	CONSULTANT'S NOTES
	35 YOM ALLEGES nerve problems. 9/27/05 reports somewhat anxious and depressed due to no improvement of his back symptoms. DX: anxiety. TX: start Klonopin 3/9/06 reports he is continued on Klonopin. Notes full orientation, NAD 5/4/06 reports he does not be in any acute physiologic distress and is not overtly depressed. ADLs: performs personal care with assistance, wife does household chores and cooking, does not drive due to his medications, handles finances, enjoys talking to family. he reports problems with concentration. reports using a cane for ambulation. No evidence of formal mental health treatment IP psych admissions. Suggest the claimant has a non-severe mental impairment. Based on the evidence of record, the claimant's statements are found to be partially credible. RECON INFO: Worsening condition: Insomnia worse, anxiety problems. New conditions: Trouble concentrating, remembering and focusing. PRTF: 7/06: Easily responsive to stimulation. Oriented X 4. Well groomed, cooperative and has a normal ability to communicate. 12/06: Does not appear to be depressed. Noted to be taking Klonopin. ADL: Reports no significant changes in pain questionnaire answers and ADL's from previous decision. Section 223 and section 1633 of the Social Security Act authorize the information requested on this form. The information provided will be used in making a decision on this claim. Completion of this form is mandatory in disability claims involving mental impairments. Failure to complete this form may result in a delay in processing the claim. Information furnished on this form may be disclosed by the Social Security Administration to another person or governmental agency only with respect to Social Security programs and to comply with federal laws requiring the exchange of information between Social Security and another agency. We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it. Explanations about these and other reasons why information about you may be used or given out are available in Social Security offices. If you want to learn more about this, contact any Social Security office. PAPERWORK REDUCTION ACT STATEMENT: **The Paperwork Reduction Act of 1995** requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB control number. We estimate that it will take you about 15 minutes to complete this form. This includes the time it will take to read the instructions, gather the necessary facts and fill out the form.

Suggest no changes to original decision.

Section 223 and section 1633 of the Social Security Act authorize the information requested on this form. The information provided will be used in making a decision on this claim. Completion of this form is mandatory in disability claims involving mental impairments. Failure to complete this form may result in a delay in processing the claim. Information furnished on this form may be disclosed by the Social Security Administration to another person or governmental agency only with respect to Social Security programs and to comply with federal laws requiring the exchange of information between Social Security and another agency.

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about these and other reasons why information about you may be used or given out are available in Social Security offices. If you want to learn more about this, contact any Social Security office.

PAPERWORK REDUCTION ACT STATEMENT: **The Paperwork Reduction Act of 1995** requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB control number. We estimate that it will take you about 15 minutes to complete this form. This includes the time it will take to read the instructions, gather the necessary facts and fill out the form.

REQUEST FOR MEDICAL ADVICE	Date Referred 04/02/2007	Social Security Number [redacted]

To: Review by specialist(s) in

PSYCHOLOGY

From:

[redacted]

Examiner Name	Examiner Telephone Number
[redacted]	[redacted]
Reviewer Name	Reviewer Telephone Number ( ) -

Claimant Name	Sex	Birth Date (mo, da, yr)	Application Date (mo, da, yr)
[redacted]	☒ M ☐ F	[redacted]	05/02/2006

Type of Claim ☒ DIB ☐ DAC ☐ DWB ☐ SSI ADULT ☐ SSI CHILD ☐ BLINDNESS

Case History ☐ INITIAL ☒ RECON ☐ ALJ ☐ DHO ☐ TERI

☐ Congressional or Controlled Inquiry

☐ Reopening of Prior Decision

☐ Prior ALJ, AC, Court Decision

☐ Prior Disability Established _____ to _____

☐ CDR Involved

CPD Date _____

Cess. Date _____

☐ Age 18 Redetermination

☐ Other

Date Last Insured or Prescribed Period	Alleged Onset 08/25/2005

Please Review the Medical Evidence and Respond to the following:

☒ Please provide an assessment of the individual's current residual functional capacities. ☐ Physical ☒ Mental

☐ SSI Childhood - Please prepare SSA-538

☐ Please provide an assessment of whether there has been medical improvement (MI) in the inividual's impairment(s) since CPD. If MI has occurred, a decision is needed as to whether MI is related to the individual's ability to work.

☐ CPD was based on meeting/equaling listing _____

☐ RFC Comparison Needed.

☐ Specific problems or questions:

Please see form in shared drive. Suggest no changes to original decision.

☐ Continued on Attached Sheet

Form SSA-448 (5-2004) ef (10-2004) Destroy F

Permanent Subcommittee on Investigations
EXHIBIT #18f

FORM APPROVED
OMB NO. 0960-0431

PHYSICAL RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT

CLAIMANT: [redacted]	SOCIAL SECURITY NUMBER: [redacted]
NUMBERHOLDER (IF CDB CLAIM):	
PRIMARY DIAGNOSIS: DDD	REC ASSESSMENT IS FOR: [X] CURRENT EVALUATION; [ ] DATE LAST INSURED: ; [ ] DATE 12 MONTHS AFTER ONSET:
SECONDARY DIAGNOSIS:	[ ] OTHER (SPECIFY):
OTHER ALLEGED IMPAIRMENTS:	

PRIVACY ACT/PAPERWORK ACT NOTICE: The information requested on this form is authorized by Section 223 and Section 1633 of the Social Security Act. The information provided will be used in making a decision on this claim. Failure to complete this form may result in a delay in processing this claim. Information furnished on this form may be disclosed by the Social Security Administration to another person or governmental agency only with respect to Social Security programs and to comply with federal laws requiring the exchange of information between Social Security and other agencies.

The **PAPERWORK REDUCTION ACT** of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to, a collection of information unless it displays a valid OMB control number.

TIME IT TAKES TO COMPLETE THIS FORM: We estimate that it will take you about 20 minutes to complete this form. This includes the time it will take to read the instructions, gather the necessary facts and fill out the form. If you have comments or suggestions on this estimate, write Social Security Administration ATTN: Reports Clearance Officer, 1-A-21 Operations Building, Baltimore, MD 21235-0001. **Send only comments relating to our "time it takes" estimate to the office listed above. All requests for Social Security cards and other claims-related information should be sent to your local Social Security office, whose address is listed under Social Security Administration in the U.S. Government section of your telephone directory.**

I. LIMITATIONS:

For Each Section A - F

⇒ Base your conclusions on **all evidence** in file (clinical and laboratory findings; symptoms; observations; lay evidence; reports of daily activities; etc.).

⇒ Check the blocks which reflect your **reasoned judgment.**

⇒ Describe how the **evidence substantiates your conclusions.** (Cite specific clinical and laboratory findings, observations, lay evidence, etc.).

⇒ Ensure that you have requested:

- Appropriate treating and examining source statements regarding individual's capacities (DI 22505.000ff. and DI 22510.000ff.) and that you have given **appropriate weight to treating source conclusions.** (see section III)
- Considered and responded **to any alleged limitations imposed by symptoms** (pain, fatigue, etc.) attributable, in your judgment, to be medically determinable impairment. Discuss your assessment of symptom-related limitations in the explanation for your conclusions in A-F below. (See also section II.)
- Responded to all allegations of physical limitations or factors which can cause physical limitations.

⇒ **Frequently** means occurring one-third to two-thirds of an 8-hour workday (cumulative, not continuous).
Occasionally means occurring from very little up to one-third of an 8-hour work day (cumulative, not continuous).

CONTINUED ON PAGE 2

A. EXERTIONAL LIMITATIONS

☐ None established. (Proceed to section B.)

1. **Occasionally** lift and/or carry (including upward pulling) (maximum) -- when less than one-third of the time or less than ten pounds, explain the amount (time/pounds) in item 6.

☐ less than 10 pounds
☐ 10 pounds
☒ 20 pounds
☐ 50 pounds
☐ 100 pounds or more

2. Frequently lift and/or carry (including upward pulling) (maximum) -- when less than two-thirds of the time or less than ten pounds, explain the amount (time/pounds) in item 6.

☐ less than 10 pounds
☒ 10 pounds
☐ 25 pounds
☐ 50 pounds or more

3. Stand and/or walk (with normal breaks) for a total of --

☐ less than 2 hours in an 8-hour workday
☒ at least 2 hours in an 8-hour workday 2 – 3 hours
☐ about 6 hours in an 8-hour workday
☐ medically required hand-held assistive device is necessary for ambulation

4. Sit (with normal breaks) for a total of --

☐ less than about 6 hours in an 8-hour workday
☒ about 6 hours in an 8-hour workday
☐ must periodically alternate sitting and standing to relieve pain and discomfort. (If checked, explain in 6.)

5. Push and/or pull (including operation of hand/foot controls) --

☒ unlimited, other than shown for lift and/or carry
☐ limited in **upper** extremities (describe nature and degree)
☐ limited in **lower** extremities (describe nature and degree)

6. Explain how and why the evidence supports your conclusions in items 1 through 5. Cite the specific facts upon which your conclusions are based.

See Attached

B. POSTURAL LIMITATIONS

☐ None established. (Proceed to section C.)

		Frequently	Occasionally	Never
1. Climbing - ramp/stairs - ladder/rope/scaffolds	The claimant is able to frequently use ramps and climb stairs. The claimant should never climb ladders, ropes or scaffolds.	☐	☐	☒
2. Balancing		☒	☐	☐
3. Stooping		☐	☒	☐
4. Kneeling		☒	☐	☐
5. Crouching		☐	☒	☐
6. Crawling		☒	☐	☐

7. When less than two-thirds of the time for frequently or less than one-third of the time for occasionally, fully describe and explain. Also explain how and why evidence supports your conclusions in items 1 through 6. Cite the specific facts upon which your conclusions are based.

See Attached

C. MANIPULATIVE LIMITATIONS

☒ None established. (Proceed to section D.)

	LIMITED	UNLIMITED
1. Reaching all directions (including overhead)	☐	☐
2. Handling (gross manipulation)	☐	☐
3. Fingering (fine manipulation)	☐	☐
4. Feeling (skin receptors)	☐	☐

5. Describe how the activities checked "limited" are impaired. Also, explain how and why the evidence supports your conclusions in item 1 through 4. Cite specific facts upon which your conclusion is based.

See Attached

D. VISUAL LIMITATIONS

☒ None established. (Proceed to section E.)

	LIMITED	UNLIMITED
1. Near acuity	☐	☐
2. Far acuity	☐	☐
3. Depth perception	☐	☐
4. Accommodation	☐	☐
5. Color vision	☐	☐
6. Field of vision	☐	☐

7. Describe how faculties checked "limited" are impaired. Also explain how and why evidence supports your conclusions in item 1 through 6. Cite specific facts upon which your conclusions are based.

See Attached

E. COMMUNICATIVE LIMITATIONS

☒ None established. (Proceed to section F.)

	LIMITED	UNLIMITED
1. Hearing	☐	☐
2. Speaking	☐	☐

3. Describe how the faculties checked in "limited" are impaired. Also, explain how and why the evidence supports your conclusions in items 1 and 2. Cite the specific facts upon which your conclusions are based.

See Attached

F. ENVIRONMENTAL LIMITATIONS

☐ None established. (Proceed to section II.)

	UNLIMITED	AVOID CONCENTRATED EXPOSURE	AVOID EVEN MODERATE EXPOSURE	AVOID ALL EXPOSURE
1. Extreme cold	☒	☐	☐	☐
2. Extreme heat	☒	☐	☐	☐
3. Wetness	☒	☐	☐	☐
4. Humidity	☒	☐	☐	☐
5. Noise	☒	☐	☐	☐
6. Vibration	☒	☐	☐	☐
7. Fumes, odors, dusts, gases, poor ventilation, etc.	☒	☐	☐	☐
8. Hazards (machinery, heights, etc.)	☐	☐	☐	☒

9. Describe how these environmental factors impair activities and identify hazards to be avoided. Also, explain how and why evidence supports your conclusions in items 1 through 8. Cite the specific facts upon which your conclusions are based.

See Attached

II. SYMPTOMS

For symptoms alleged by the claimant to produce physical limitations, and for which the following have not previously been addressed in section I, discuss whether:

A. The symptom(s) is attributable, in your judgment, to a medically determinable impairment

B. The severity or duration of the symptom(s), is in your judgment, is disproportionate to the expected severity or expected duration on the basis of the claimant's medically determinable impairment(s).

C. The severity of the symptom(s) and it's alleged effect on function is consistent, in your judgment, with the total medical and non-medical evidence, including statements by the claimant and others, observations regarding activities of daily living, and alterations of usual behavior or habits.

See Attached

III. TREATING OR EXAMINING SOURCE STATEMENT(S)

A. Is treating or examining source statement(s) regarding the claimant's physical capacities in file?

☒ Yes ☐ No (includes situations which there was no source or when the source(s) did not provide a statement regarding the claimant's physical capacities.)

B. If yes, are there treating/examining source conclusions about the claimant's limitations or restrictions which are significantly different from your findings?

☒ Yes ☐ No

C. If yes, explain why those conclusions are not supported by the evidence file. (Cite the source's name and the statement date)

See Attached

MEDICAL CONSULTANT'S SIGNATURE	MEDICAL CONSULTANT'S CODE	DATE
[redacted]	32	4/2/07

RFC Continuation

Sections Being Modified

SSA-4734-UA – Physical RFC

- [X] Section I. Limitations
- [X] Section II.. Symptoms
- [X] Section III. Medical Source Statements

SSA-4734-BK-Sup – Mental RFC

- [ ] Section III. Functional Capacity Assessment

SSA-2506-BK – PRTF

- [ ] Psychiatric Review Technique Form

SSA-538-F6 – Childhood Disability Evaluation Form

- [ ] Section III. Explanation of Findings

These findings complete the medical portion of the disability determination.

The claimant alleges disability due to severe back and leg pain, nerve problems, numbness, insomnia due to pain, and bulging disc. He reports his condition. He alleges that these symptoms result in limitations in standing, walking, lifting, carrying and performing at a consistent pace. The medical evidence establishes a medically determinable impairment of DDD.

09/19/05: MRI showed right posterolateral L4-5 disk bulge w/o herniation or mass effect; asymmetric lumbosacroiliac articulation; minimal levoscoliosis.

12/14/05: TP noted claimant c/o continued bilateral LE pain to his thighs despite ESI on 11/17/05. 2nd ESI administered.

02/02/06: CT showed minimal DDD at L4-5 and L5-S1 w/o evidence of nerve root compression. Normal bone scan study.

03/14/06: lumbar discogram showed abnormal pain and left-sided leg pain at L5/S1; right-sided facet arthrogram produced back pain and bilateal leg pain; positive concordant back pain at S1/S2 with a posterior teat within the disc. TP assessed that the caudal lumbosacral disc junction was the major problem.

03/27/06: TP noted no acute physiological distress, back pain with walking and getting up, 217#, positive SLR on the left at 70 degrees. TP noted probable construct and dynamic stabilization of the symptomatic disc, fusion of the symptomatic disc with a rudimentary disc, and a facet joint fusion.

5/4/06 f/u - clmt wishes to proceed with pain mgmt before having surgery. PE: 217 lbs, positive SLR on left, moves about with an antalgic gait. DX: multi-level DDD, accelerated by his work injury.

ADLs: performs personal care with assistance, wife does household chores and cooking, does not drive due to his medications, handles finances, enjoys talking to family. he reports problems with concentration. reports using a cane for ambulation.

In assessing the credibility of the claimant's statements regarding symptoms and their effects on function, his medical history, his activities of daily living, the type of treatment he received, his response to treatment, observations and the consistency of the evidence were considered.

The claimant has described daily activities that are significantly limited. This is consistent with the limitations indicated by other evidence in this case. He requires an assistive device to ambulate.

Based on the evidence of record, the claimant's statements are found to be partially credible.

The medical source opinion of the treating source, [redacted] in the report dated 5/4/06, indicates that the claimant is unable to work. This is an issue reserved to the Commissioner. However, consideration was given to this opinion.

[redacted] Spec. Code: 32 4/2/07

Signature

RECON INFO:
Worsening: back & leg, insomnia and anxiety.
New conditions: trouble concentrating, focusing & remembering.

7/06: Gait normal. Sitting on R buttock with L leg in extension. L-Spine with tenderness off midline bilaterally in a symmetrical distribution diffusely severe. Muscle spasm bilaterally in a symmetrical distribution. Active ROM. Flexion restricted LBP present bilaterally- severe. Extension restricted to 1 degrees LBP present bilaterally- severe. Passive ROM. Flexion restricted, extension restricted. Neuromuscular exam normal. Sacral spine with moderate tenderness in midline. Legs with normal inspection, ROM, muscle strength, tone and stability. CN 1-12 intact & symmetrical. Motor & sensory exams WNL. DTR's 2+ throughout. 8/06: Underwent injections for back pain. 9/06: FCE: Noted to ambulate with a stooped somewhat flexed posture at the waist and the hips with a limp on the L. Does not need an assistive device. Reflexes 2+ in bilaterally LE. Slight decrease in sensation in the L foot along the bottom however no specific dermatome. FCE limits claimant to sedentary physical demand level of work, but is unable to sit greater than 15 minutes or stand greater than 15 minutes. The P.T rep further notes that the claimant would be ineffective in an office situation. 10/06: Positive SLR on L. Decreased sensation in L leg below the knee. Otherwise has 5/5 strength in LE's. Gait is markedly antalgic and ambulates very slowly. Sits with all weight on R hip with L leg extended out in front. 12/06: Antalgic gait favoring L leg. Appears to have good strength in the LE but this is compromised because of L knee pain & back pain. DX: Multilevel lumbar DDD with deterioration. Several abnormal discs which would probably benefit from an interbody fusion as well as Dynesys instrumentation. 2/07: C/O back & L leg pain. Recommended a fusion. Patient declines surgery. Already undergone an FCE and therefore by definition is at MMI. Exam: Positive SLR on L. Suggestion of anterior column failure on R. No motor or sensory deficits. No calf atrophy. Some increased hamstring tonicity. No spasm identified although some tenderness is subjectively reported to palpation at caudal L5-S1 level.

Per [redacted] in the report dated 2/7/07 indicates that the claimant is able to return to work with restrictions. This is an issue reserved to the Commission and is given appropriate weight and considered.

Per [redacted] in the report dated 12/7/06 indicates that the claimant is unable to work. This is an issue reserved to the Commissioner and is given appropriate weight and considered.

ADL: Reports no significant changes in pain questionnaire answers and ADL's from previous decision.

Suggest no changes to original decision.

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	**CLAIM FOR**
[redacted] (Claimant)	Period of Disability and Disability Insurance Benefits
(Wage Earner)	[redacted] (Social Security Number)

INTRODUCTION

The claimant filed a Title II application for Disability Insurance Benefits on May 2, 2006 (protective filing date), alleging disability since August 25, 2005. After initial and reconsideration denials, he requested a hearing. The hearing was held on January 25, 2008 in Bluefield, West Virginia, with the undersigned Administrative Law Judge presiding by videoteleconference. The claimant appeared and testified, represented by [redacted] Attorney at Law. Also testifying was [redacted] vocational expert.

ISSUES

The general issue is whether the claimant is entitled to a period of disability and Disability Insurance Benefits under sections 216(i) and 223 of the Social Security Act. The specific issue is whether he is under a disability, which is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

EVALUATION OF THE EVIDENCE

The record reflects that the claimant met the disability insured status requirements of the Social Security Act on the alleged onset date, and will continue to do so at least through December 31, 2010 (Exhibit 3D).

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At the hearing, the claimant testified that he has a general equivalency diploma and past relevant work as a welder. He said he has not performed any gainful activity since August 2005, and claimed disability due to back pain that precludes sitting or standing more than 15 minutes at a time. Claimant testified that pain has persisted despite epidural steroid injections, use of a back brace and TENS unit, and treatment at a pain clinic, and reported that he does very little during the course of the day. The vocational expert testified that claimant's past relevant work as a [redacted] a skilled job performed at the heavy level of exertion, provides no skills that are transferable to sedentary work.

The medical evidence reveals that the claimant saw [redacted] for orthopedic evaluation on September 6, 2005 and related lower back pain that had persisted since an injury at work on August 25, 2005. MRI of the lumbosacral spine on September 19, 2005 showed right posterolateral disc bulge at L4-5 (Exhibit 1F). Claimant had a series of epidural steroid injections (Exhibit 3F), but records from the treating physician indicate that symptomatology persisted (Exhibit 4F). Claimant was advised to consider surgical intervention, but he elected to pursue treatment from a pain management center (Exhibit 16F). Results of Functional Capacity Evaluation on September 26, 2006, which showed claimant to be incapable of sitting or standing more than 15 minutes at a time, indicate that he is incapable of even sedentary work activity (Exhibits 11F and 12F). Subsequent records from [redacted] document radiculopathy in the lower extremities with positive straight leg raising bilaterally, and [redacted] as indicated that he concurs with recommendation for spinal fusion (Exhibits 19F, 22F, and 27F).

The record reflects that the claimant was [redacted] years old on the alleged onset date and has a general equivalency diploma. There is no evidence to suggest that he has performed any gainful activity since August 25, 2005. The claimant has a back disorder, which is "severe" as that term is defined in the Regulations. Though severe, it does not meet or medically equal the requirements of any impairment listed in 20 CFR Part 404, Appendix 1 to Subpart P.

The claimant's description of his limitations is consistent with the medical evidence of record, and his testimony is credible. After consideration of all evidence of record, the undersigned concludes that back disorder can reasonably be expected to produce chronic pain and physical limitations that would preclude performance of even sedentary work on a regular and continuing basis. In reaching this conclusion, the undersigned has reviewed the opinions of the state medical consultants pursuant to 20 CFR 404.1527 and Social Security Ruling 96-6p. Claimant was denied initially and upon reconsideration based on a finding that he is able to perform work at the sedentary level of exertion that does not involve exposure to hazards (Exhibits 8F and 17F). Because these opinions were rendered by non-examining physicians and are not supported by the objective medical evidence of record, they are entitled to very little weight. With due consideration of Social Security Ruling 96-9p, the undersigned concludes that the occupational base is eroded to the point that there do not exist a significant number of jobs which the claimant is capable of performing. Accordingly, the claimant is under a "disability" as defined by the Social Security Act and Regulations.

See Next Page

FINDINGS

After careful consideration of the entire record, the Administrative Law Judge makes the following findings:

1. The claimant met the disability insured status requirements of the Social Security Act on the alleged onset date, and will continue to do so at least through December 31, 2010.

2. The claimant has not performed substantial gainful activity since August 25, 2005.

3. The claimant has a back disorder, which is "severe" as that term is defined in the Regulations.

4. The claimant's impairment does not meet or medically equal the requirements of any impairment listed in 20 CFR Part 404, Appendix 1 to Subpart P.

5. The claimant's assertions concerning his ability to work are credible.

6. Limitations imposed by back disorder preclude performance of even sedentary work on a regular and continuing basis.

7. The claimant is unable to perform past relevant work as a welder.

8. The claimant was years old on the alleged onset date, and accordingly is a younger individual.

9. The claimant has a general equivalency diploma.

10. The claimant has not acquired any skills from past relevant work that are transferable to other jobs at the sedentary level of exertion.

11. Considering the claimant's limitations, he cannot make an adjustment to any work that exists in significant numbers in the national economy; a finding of "disabled" is therefore reached in accordance with the provisions of Social Security Ruling 96-9p.

12. The claimant has been under a disability, as defined in the Social Security Act and Regulations, since August 25, 2005.

DECISION

It is the decision of the Administrative Law Judge that, based on the application protectively filed on May 2, 2006, the claimant is entitled to a period of disability commencing August 25, 2005, and to Disability Insurance Benefits under sections 216(i) and 223, respectively, of the Social Security Act.

See Next Page

Any benefits to which claimant may be entitled are subject to offset to reflect receipt of Workers' Compensation payments.

The undersigned recommends that a medical review be conducted within one year in order to determine if there has been medical improvement in claimant's condition with continued treatment.

Richard L. Swartz
Administrative Law Judge

4-24-08
Date

(The following is a transcript in the video hearing held before Richard L. Swartz, Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, on January 25, 2008, at Bluefield, West Virginia, in the case of [redacted] Social Security Number [redacted] The Claimant appeared in person and was represented by [redacted] Attorney. Also present was [redacted], Vocational Expert.)

(The hearing commenced at 2:16 p.m. on January 25, 2008.)

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

ALJ: We're ready to proceed with the hearing in the case of Claimant. Is your name [redacted]

CLMT: Yes, sir.

ALJ: [redacted] I have your Social Security Number as [redacted]

CLMT: Yes, sir.

ALJ: Is your mailing address, [redacted]

CLMT: Yes, sir.

ALJ: This is a claim for Disability Benefits. I'm Judge Richard L. Swartz with the Office of Disability. You're being represented today by your attorney, [redacted] (Phonetic)?

CLMT: Yes, sir.

ALJ: Counsel, we have an exhibit file in this gentleman's claim with the materials you submitted most recently that have been added to the file, and the last exhibit now is number 28, Section F. Have you had an opportunity to review that file?

ATTY: Yes, sir.

ALJ: Do you have any objections to including any of those materials?

ATTY: No, sir.

ALJ: We show the exhibit file that is dated today part of

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EXHIBIT #18h

today's record. I also, have [redacted], who is present here in the room with me, although he is not on the screen right now, but he is here to testify as a Vocational Expert. Have you discussed that with [redacted]

ATTY: Yes, sir.

ALJ: [redacted], including you, that makes two of you here to testify. Counsel, would you like to proceed?

(The Claimant, [redacted], having been first duly sworn, testified as follows:)

EXAMINATION OF CLAIMANT BY ATTORNEY:

Q [redacted] one of the things I wanted to ask you about is your last job that you had. Where were you working at? Who was you working for?

A [redacted].

Q Okay. What was you doing for them?

A I was a [redacted]

Q Okay. It looks like the record shows you had an accident while you was working for them. Is that right?

A Yes, sir.

Q If you would, briefly explain to the judge what happened to you. What, what were you doing and how were you hurt?

A Me and another colleague was lifting a miner jack out of the wash tank, and I just felt something snap in my back and --

Q How much does this jack weigh approximately?

A I, it, it was maybe 150 pounds. Something like that it was.

Q Okay. All right.

A Who'd you go first to get treatment with over this problem?

A I went to -- first to [redacted]

Q Was that [redacted] (Phonetic) or --

A It was the emergency -- [redacted] (Phonetic), it was.

Q Oh, okay, okay.

A I had to see him at the emergency room, and then he told me to see my family doctor the next day, and then --

Q Which was who?

A [redacted]

Q Okay. I figured we'd get to him. Okay. Now a good part of the, your medical records covers, looks like it was [redacted] (Phonetic) and [redacted] (Phonetic). What kind of doctor is [redacted]?

A He's a neurosurgeon.

Q Okay. Back specialist?

A Yes, sir.

Q Okay. What, what brought you, what brought you to [redacted]? Did -- were you referred there by one of your other doctors?

A Yes. [redacted].

Q Okay.

A I seen him -- [redacted] referred me to [redacted], and Dr. [redacted], he was a orthopedic doctor, I guess, so he referred me to a neurosurgeon, which was [redacted]

Q Okay. What did -- what did Dr. -- well, are you still treating with him?

A [redacted]?

Q Right.

A No, he left, and [redacted] was his partner, so [redacted] took

over his patients.

Q Okay. We'll go back to [redacted] for just a minute. What did he do for you? What kind of treatment did he give, give you?

A Well, he give me epidural shots, Facet injection shots --

Q Did he run any tests on you?

A MRI, also FCE test or --

Q Right.

A I had to have that and --

Q One of the things I wanted to mention to you, it looks like back in February of '06, February 9th of '06, he was speaking about installing some hardware in your lower spine and also doing fusion surgery as well. Did he discuss that with you?

A Yes, sir, he did.

Q Okay. What was the conversation? I mean, did, did, did he say that was the only alternative you had -- that he was looking at or -- how did that --

A Well, it was, you know, he said, you know, either that or just learn to live with it, you know? That was basically, basically all he could do, you know, but --

Q Now you'd mentioned the FCE. Did you make it through the FCE okay?

A Well, I had a lot of trouble out of it, but, you know, they, you know, determined, you know, I couldn't stand, you know, over 15 minutes, whatever, couldn't sit, you know --

Q Well, one of the things they put in there was sit for around 15 minutes is, it's kind of painful for you.

A Yeah.

Q Are those limitations, and this was, I believe, September of '06, September 26, '06. Are those limitations still accurate? Or are they or are they not accurate as we sit here today?

A Yeah, yeah, they're accurate.

Q Okay.

A Yeah, they're still the same. I can't hardly sit or stand.

Q Well, as far -- and you mentioned going to [redacted] next. What if anything has [redacted] been able to do for you?

A Basically, he, he tried to, you know, he give me some of the epidural blocks, you know, and of course they didn't, they didn't faze it none. That's you know, other than medications, that's all. That's all of it.

Q And he, [redacted] had mentioned in July 18th of last year 2007, that, that you've been wearing a back brace. Do you use the back brace now?

A Yes, sir, yes. Yeah, he prescribed me a back brace. Yes, sir.

Q Okay.

A And a TENS unit, too, also.

Q A TENS unit as well.

A The pain clinic is the one that prescribed me the TENS unit.

Q Okay.

A So.

Q What type of -- well, who's the doctor you see at the pain clinic now?

A Well, [redacted] (Phonetic).

Q [redacted]

A Yes, sir.

Q Okay. What have they been doing for you down at the pain clinic?

A They, the TENS unit, you know. Basically, just -- see, now they tried to, they give me some of those epidural blocks, too.

Q Epidural?

A Yes. They was like maybe cortisone, or something. But I had, the last one I had, the cortisone, l [redacted] (Phonetic) said it -- you know, interacted with the nerve roots where they were irritated so bad.

Q Right.

A And I had a lot of trouble of it, so wouldn't give me no more of them.

Q Okay.

A So that's basically it, other than medication and TENS unit; that's basically all what they're doing now.

Q Okay. What, it looks like you're being treated some with [redacted] (Phonetic). Is she a counselor?

A Yes, sir.

Q What, what are some of the things she's been treating you for?

A Well, depression, anxiety, you know --

Q Is this stuff due to the, due to the, the, the accident? I mean, were you doing okay beforehand? Before this accident?

A Well, yeah. I mean, I just was getting really depressed, you know, where I can't do nothing.

Q Okay.

A Yes, sir.

Q One of the things -- well, actually, some of the things she had mentioned in one of her notes that I -- that you're nowadays easily aggravated, irritated. What, explain that for us.

A I just, seems like, you know, everything bothers me, you know. Anything loud, you know, TV, anything like that, or even my young-un, you know?

Q How old is your --

A He's eight.

Q Okay, so --

A Sometimes, you know, he, like, he runs through the house, a-hollering, it just goes all over me.

Q Okay. Are you living in any way as far as interacting with your son?

A Well, I, you know, I can't do none of the things I used to do with him, you know. I, I still spend time with him, you know, doing what I can with him, but it's not like I, you know, do very much with him.

Q Okay. How, you know, overall, generally speaking, with the difficulties you've been having, explain for the judge if you would, how you function throughout the day, after, you know, starting when you get up in the morning. I guess first place would be how do you, do you sleep okay at night?

A No, sir, I don't. Sometimes you know I wake up during the night. You know, I hadn't been asleep, maybe, two hours or so, and --

Q Do you take medications before you go to bed?

A Yes, sir, and sometimes, you know, when it wears off, like, a couple hours, you know, I have to get up because of my back's real stiff and hurting my legs and stuff, and I have to get up, move around, take more medicine before I, you know, get anymore relief again.

Q Are you sleeping in a regular bed?

A No, sir. Most time I sleep on a sectional couch.

Q Okay.

A So regular bed, it seem like it, almost soft or something, I don't know what it is. Seem like I'm cut in two from my waist down when I try to sleep in a bed. I sleep on a hard couch.

Q When you do get up and start moving around, what do you do throughout the day?

A Well, you know, different days bring along different things, you know. According to how I feel, you know, sometimes I, you know, I might, if it's pretty out, I might get out and walk around the, you know, the place -- or enjoy that or, you know, usually I, I end up having to go on back into the house.

Q During the summertime, do you do any outside working, around the home, for example, mowing the grass?

A No.

Q Who does that?

A I, usually, my brother-in-law or my nephew will.

Q Okay. How about house work? For example, doing some dishes or vacuum cleaning, things like that, dusting? Do you help with

housework?

A Well, my back, if I, if I feel all right, some days I do, you know. I mean, just do what I can, you know. I, if I start hurting I, you know, I have to sit down and quit, or -- but yes.

Q Are you married?

A Yeah.

Q Does your wife work outside the home?

A No, not now she don't.

Q Okay. Okay. And I thought I'd mention, too, Judge, [redacted] is presently receiving Workers' Comp. benefits.

ALJ: Okay.

Q How is your energy level during the day?

A Well, I just, I don't, I don't have a lot of energy, it don't seem like, you know. But, you know, it seem like I have good days and bad days, you know?

Q Sure.

A It just, you know, fluctuates, you know?

Q Sure. Are there any days during the week that you need to lay down and rest?

A Oh, yeah. Yeah, I, some days, you know, I might take a nap for a hour or something, you know, it, you know, I do that if, like if I don't sleep good at the night or something, it hits me during the day. If I can get comfortable, I'll take a nap, you know?

Q How many days out of the week, approximately, would that be?

A Well, now, most of the time, at least four or better, you know. Some, you know, it's just different weeks, you know?

Q Okay. How about -- do you have a driver's license?

A Yes, sir.

Q Okay. Do you drive now?

A No more than I have to. I mean, I might take my son to the bus stop or --

Q How far is that away from you home?

A The bus stop ain't -- it might be a quarter of a mile.

Q Okay.

A Or I might go to a convenience store, you know, which is three or four miles down the road, you know.

Q Okay. How far was it from your home up to here? How long did it take you to get to this hearing office?

A Let's see, it took us about a hour, twenty minutes, I guess.

Q Okay. Who's us?

A Me and my wife.

Q Okay. Did you drive, or did she drive?

A She drove.

Q Okay. Does it hurt you to drive a distance like this?

A Oh, lord, yes. Yeah, I have, it hurts me to ride, yeah.

Q Okay. How long did you work for the, for the [redacted] where you hurt, hurt?

A Let's see, I just worked for them right around two years. Best to my recollect.

Q Okay. Who was you with, if anyone, before them?

A I, before them, I was working in Bristol, Tennessee, for [redacted]

Q Okay, what was you doing?

A Let's see, welded, fabricated big trucks.

Q Okay. How long was you working with them.

A I worked for him for two-and-a-half years.

Q Okay. Where was you at before that?

A Before that I was with [redacted] in Glade Springs.

Q What did you do there?

A I [redacted] stuff, yeah.

Q Approximately how long did you work with them?

A I worked with them about 12, 13 years.

Q Okay. Okay. Enjoyed your work?

A Oh, yeah, yeah. I was good at my work.

Q Okay. Judge, I think that's all I have for right now.

ALJ: Okay.

BY THE ADMINISTRATIVE LAW JUDGE:

Q There's one of your doctors in the file said you were -- they were going to send you to a [illegible] . Did you ever see [illegible]

A Yes, sir. He's at the pain clinic where [illegible] s at.

Q Oh, okay.

A Sometimes I see [illegible]e, sometimes [illegible] yeah.

Q Are you on any pain medicine now?

A Yes, sir.

Q What, what do they give you?

A Lortab, Lortab 10, or I think that's what they're called.

Q How often do you take them?

A Every four to six hours, as needed.

Q You actually do that? I mean, how often do you actually take them?

A Well, if it needs, you know -- I usually try not to take over four a day at least, you know? In a 24-hour period, you know?

Q Okay.

A But sometimes, now, if I, I may have to, you know. Just different days, if I don't need them, I don't, I try not to take them, but --

Q Do you have any dependents? Other than your wife?

A I have a eight-year-old son, yeah.

Q Is your son healthy?

A Basically.

Q Okay. He's not, you know, severely handicapped or anything like that?

A Oh, no. Uh-uh. No.

ATTY: Didn't he have some issues early on?

A He was born with, he was born with problems, but, you know, he's, he's doing good now.

Q How about your wife? Is she healthy?

A Yeah, she's, she's pretty healthy. Yep. I also, on the medication, I take Klonopin for depression and anxiety.

ALJ: Yeah. Okay. That's all the questions I have. Counsel, do you have anything else?

ATTY: No, sir.

BY THE ADMINISTRATIVE LAW JUDGE:

Q [redacted] the record indicates you have a GED education. Is

that right?

A Yes, sir.

Q Did you get, have any kind of training since then?

A Since the GED?

Q Yeah.

ATTY: Like any kind of technical training, things like that.

A No, no, I've just, I've just worked, you know. That's all I've done.

Q How about the [redacted] Did you go to a school for that or you just learn on the job?

A The what?

ATTY: The what, Judge?

Q The [redacted]

A Oh.

Q Did you learn that on the job or did you go to a school?

A No, I basically learned it on the job, you know.

Q Okay.

(The Vocational Expert, [redacted], having been first duly sworn, testified as follows:)

EXAMINATION OF VOCATIONAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q [redacted], would you state your name and address please?

A [redacted]

Q Counselor, do you have any questions about or objections to [redacted] qualifications?

ATTY: No, sir.

Q [redacted] have you been present for the entire course of the hearing?

A Yes, Your Honor.

Q Did you review the vocational materials in this file?

A Yes.

Q Do you need any further information from [redacted]?

A No, Your Honor.

Q Would you give us your assessment of his past relevant work experience?

A Yes, sir. The work he did as a [redacted] is SVP: 5, which is skilled, and it's classified as heavy exertional level.

Q That basically covers it all?

A Yes, it does. He's just a, he's a skilled [redacted]

Q Okay. Are there any [redacted] jobs at a sedentary, light level so he could transfer these skills to such a thing?

A No, most of the [redacted] jobs are between medium and heavy.

ATTY: You can stand up long as you need to.

Q [redacted], if the claimant is about 36 or 37 years old, in that neighborhood. If, with his education level and this past work experience, if he were limited to do the sedentary or light work where he would need some sort of an occupation where he could change positions throughout the workday, more than, more than most standard breaks and lunch, in order to relieve discomfort, can you suggest any jobs at either one of those exertional levels?

A As long as he's able to sit, and stand and walk six hours in an eight-hour day, and be productive, there's some unskilled, light exertional level jobs (INAUDIBLE). We have, there's a, a storage rental clerks, storage facility rental clerk. Do you need a DOT

numbers on these?

Q No.

A On the DOT number, you don't need -- 80,500 nationally; 6,400 in the Mid-Atlantic. We have unskilled sales clerk, which is at the light level. There's 164,600 nationally; there's 5,800 in the Mid-Atlantic. We have assembler small parts, there's a -- and that's under skilled, light. There's 30,500 nationally, and 4,700 in the Mid-Atlantic region. Do you need more than that, Your Honor?

Q No. How about at the sedentary level? Are there any there for you where you would have the opportunity to change positions occasionally if you wanted to?

A Yes.

Q Other than the regular breaks, and so forth.

A Yes, Your Honor. Again you'd have to be able to set six hours out of an eight-hour day and be productive. There's a charge account clerk. There's 380,000 nationally, and there's 34,000 in the Mid-Atlantic region. There's an order clerk, 587,000 nationally; 27,400 in the Mid-Atlantic. There's a office clerk with addresser, there's 343,000 nationally, and 17,500 in the Mid-Atlantic. Would you need more than that, sir?

Q No, I guess that would do. Are there any hazards involved in these jobs so if a person had some sort of problem (INAUDIBLE) they were required to avoid hazardous situations. Would that be a difficulty in any of these?

A No, Your Honor.

Q How about if they were limited to only occasional stooping and

crouching? Could they do that, with all of these, with these jobs, would that, would that be a problem?

A No, Your Honor.

Q If your discomfort limited you to, to the extent that you were required to change positions from sitting to standing, or standing to sitting, at least briefly in order to relieve discomfort for about every 15 minutes, could you still perform any of these jobs?

A It would be, I mean, you, you've got to be productive in an eight-hour work day. I guess it goes with the, the frequency and duration. If he's able to sit and stand every 15 minutes and still be productive, then that would work but if, if he basically having problems staying on task then that would take those jobs away.

Q Okay. He's described to us frequently why he has to just, has to sleep during the day. Could he do that on any of these jobs?

A No, Your Honor. The -- you get a 15 minute break in the morning, a lunch break, and 15 minute break in the afternoon, and if he's having to take more than that, then it would probably result in being discharged.

Q He's also testified so some ongoing depression or anxiety that has developed since the time of his accident. If this affects on his ability to perform all of the different parts of employment or at least (INAUDIBLE), would it compromise any of these jobs?

A Not these jobs, Your Honor. These are unskilled jobs, but probably unskilled jobs or jobs (INAUDIBLE) 30 days (INAUDIBLE).

Q Would he have to be able to work eight hours a day in order to do these jobs, with at least some position or other.

A He would have to work eight hours a day.

ALJ: That's all the questions I have. Counsel, do you have any?

ATTY: I don't think so, Judge. We would just ask Your Honor, to, if you would, to take into account the results of the FCE and the opinions rendered by the, the FCE examiner at Exhibit 12F, and the opinions in combination of the neurosurgeons, [redacted] well, actually, first [redacted] He's at Exhibit 5F. He, he did say that, that he had reviewed the FCE results and did not believe that, that [redacted] could perform any work right now. And we would also ask Your Honor to consider, if you would, that [redacted] either meets or equals listing 1.048 for spine disorders as well, and I think that--

ALJ: Okay.

ATTY: I think that's all I have, Your Honor.

ALJ: [redacted] we're finished. You can leave, okay? Good luck to you.

CLMT: Thank you, sir.

ATTY: Thank you.

ALJ: You're welcome. Good luck.

CLMT: Thank you.

(The hearing closed at 2:43 p.m. on January 25, 2008.)

C E R T I F I C A T I O N

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded at the hearing held in the case of [redacted] before Administrative Law Judge Richard L. Swartz.

Linda Benson/cmm
Linda Benson, Transcriber
Free State Reporting, Inc.

Caroline Musterman/cmm
Caroline Musterman, Proofreader
Free State Reporting, Inc.

SOCIAL SECURITY

September 14, 2011

W. Howard O'Bryan, Jr.
Administrative Law Judge
Office of Disability Adjudication and Review
301 NW 6th Street
Room 300
Oklahoma City, OK 73102

Dear Judge O'Bryan:

I have noticed that your decisions include duplicate copies of medical evidence already contained in claimants' files. Additionally, you reference unnecessary legal and medical authority in lengthy footnotes in the decisions. This conduct is inconsistent with agency policies and regulations. Accordingly, I direct you to modify your decisions, as described in detail below.

A review of 168 decisions issued by you in Fiscal Year 2011 shows that, in 153 of those decisions, you included significant amounts of superfluous information, including unnecessary and lengthy citations to legal and medical authority. In addition, you inserted images of the claimant's medical records in your findings of fact and conclusions of law, instead of analyzing the information. Furthermore, instead of making specific findings, you simply state, "etc. etc. etc," at some points of the decision. Attachment A contains several decisions highlighting the inappropriate language and information.

As a Social Security Administration (SSA) Administrative Law Judge (ALJ), you are responsible for conducting hearings and issuing legally sufficient and defensible decisions. *See* HALLEX I-2-0-5.B. A legally sufficient and defensible decision requires that you comply with SSA's laws, regulations, rulings, and policies. In order for SSA to continue to meet its obligations to the public, it is essential that ALJs discharge their duties in a timely manner that reflects a high degree of responsibility, professionalism and integrity. You are expected to provide hearings and decisions to claimants in a timely and judicious manner. Satisfying these responsibilities requires an ALJ to follow both the letter and spirit of the policies he is bound to follow.

To ensure that you provide claimants with legally sufficient and judicious decisions, I am directing you to comply with all agency regulations and policies.

Specifically, pursuant to HALLEX I-2-8-25.C. *Writing the Decision, Content and Format*, the decision must state why the case is before the ALJ for a decision; provide the **rationale for the ALJ's findings** on the relevant issues and the ultimate decision; **list the ALJ's findings** on the

Permanent Subcommittee on Investigations
EXHIBIT #19

relevant issues; and **state the ALJ's ultimate decision** in a decisional paragraph which includes the relevant dates. (*emphasis added*)

The second part of the decision should provide the rationale for the ALJ's findings on the relevant issues and the ultimate conclusion, by including the following as applicable:

(a) an explanation of the findings on each issue leading to the ultimate conclusion.

(b) appropriate reference to the applicable statutes, regulations, and SSA rulings.

(c) a discussion of the weight assigned to the various pieces of evidence in resolving conflicts in the overall body of evidence.

(d) resolution of all subjective allegations, especially those regarding symptoms, and an assessment of the credibility of the evidence.

The fourth part of the decision should provide the ALJ's ultimate conclusion in the case. The decisional paragraph should be written in language which is brief and to the point.

Section D, *Language and Style*, sets forth that the ALJ must write the decision so that the claimant can understand it. Further, **the ALJ must avoid using non-prescribed standardized language, i.e. boilerplate, in the rationale.** (*emphasis added*)

In addition to the directive to adhere to the acceptable format for preparing decisions and to refrain from using unnecessary language in your decisions, I am directing you to refrain from the following:

1. Inserting any portion of a claimants' medical evidence into the decision. The ALJ must analyze the evidence of record. While such analysis may necessarily require the adjudicator to summarize some of the evidence, it is unnecessary to insert images of the actual evidence into the decision. The claimant has access to all evidence in the record, and inserting images of the evidence into the decision is unnecessarily duplicative. In addition, such a practice makes the decision more difficult to understand.

2. Including portions of medical or legal authority in footnotes, or in the body of the decision. Notably, HALLEX I-2-8-25.D, *Language and Style*, sets forth that an ALJ must not cite medical texts and medical publications as the authority for resolving any issue. If it is necessary to refer to a medical text or medical publication, the ALJ must submit the material to the claimant or the representative for review and comment, and make the material a part of the record.

3. Summarizing claimants' impairments using the abbreviation "etc." or any derivation of this term.

In December 2008, Regional Chief Administrative Law Judge Joan Parks Saunders orally counseled you regarding the content of your decisions. In 2010, I orally counseled you twice about this issue. Despite these discussions, you continue to engage in conduct that directly affects the agency's mission to serve the public efficiently and effectively. This conduct is inconsistent with agency policies and regulations. Although this directive does not constitute disciplinary action, please be advised that failure to follow this management directive may lead to disciplinary action.

You should consider the Employee Assistance Program (EAP) as a possible resource for assistance in resolving any personal problems that may be adversely affecting you. The toll-free number for the EAP is 1-800-222-0364.

I urge you to accept this letter in the spirit in which it is given, as notice that your compliance with agency law, regulations, rulings, and policies is essential to providing due process for the public we serve. I sincerely hope that this letter has reinforced agency expectations and results in your improved conduct. I am available to discuss how we might further assist you.

Respectfully,

Douglas S. Stults
Hearing Office Chief Administrative Law Judge

I acknowledge receipt of this management directive. My signature below does not signify agreement, merely acknowledgement of receipt.

Dated: September 14, 2011

W. Howard O'Bryan, Jr.

OFFICE OF APPELLATE OPERATIONS

EXECUTIVE DIRECTOR'S BROADCAST

Volume 2, Issue 16 August 19, 2011

Executive Director: Judge Patricia A. Jonas
Deputy Executive Director: Judge Gerald Ray
Executive Officer: Vanessa G. Butler

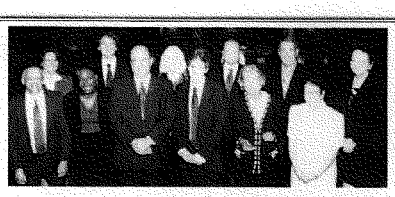
OAO staff may submit suggestions for consideration to: ||ODAR OAO Admin Services.

THE FOUR PILLARS OF DISABILITY ADJUDICATION AND REVIEW

- Due Process of Law
- Factual Accuracy
- Policy Compliance
- Timely Service

In this issue (Click on links below to go to):

- *Remands of Dismissals Decline*
- *New Administrative Appeals Judges (photo)*
- *Progress Towards Fiscal Year 2011 Goals*
- *OAO Staff Profile*
- *Technology Tip - Graphics*
- *ODAR LDP Brings Management Experience to Appeals Officer*
- *Endocrine Disorders Remain Impairments After Listing Update*
- *Employee Benefits Information System*
- *Analyst Tip – Prototype States*



New administrative appeals judges (AAJs) were sworn in at a July 29 ceremony on Capitol Hill. Pictured (front row, from left): AAJ Michael Siegel, AAJ Milande Louima, Commissioner Michael Astrue, ODAR Deputy Commissioner Glenn Sklar, acting Social Security Advisory Board Chair (and speaker at the ceremony) Barbara Kennelly, Chief ALJ Debra Bice; (back row, from left): AAJ Laura Ort-Presley, OAO Deputy Executive Director Gerald Ray, AAJ Constance Mallon-Link, AAJ Edward Aldrich, Assistant ODAR Deputy Commissioner Jim Borland, and OAO Executive Director Patricia Jonas. Not pictured: AAJ Stanley Smallwood. Click here to view

Remands of Dismissals Decline

Trends in dismissal remands demonstrate how OAO's data collection and analysis mission can contribute to improved performance of the disability adjudication process (see OAO newsletter 10/8/10). OAO staff noticed that in FY 2009, Appeals Council remands of requests for review (RR) of administrative law judge (ALJ) dismissals had reached 22.2% of all remands, according to data gathered through the Appeals Review Processing System (ARPS).

After several educational efforts, that percentage dropped to 19% in FY 2010 and is on track to a projected decline to 17.6% of RR remands by the end of FY 2011. These reductions become even more significant when compared with a projected 38% increase in RR from FY 2009 through FY 2011.

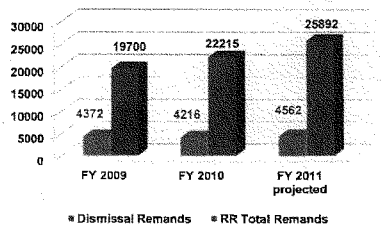
Analysis of more detailed ARPS data revealed that the three biggest of 18 measured reasons for dismissal remands are:

(1) the hearing notice was sent to the wrong claimant address,
(2) acknowledgement procedures were misapplied, and
(3) that the claimant actually had shown good cause for untimely filing of a hearing request

ARPS data show that the first two measures are projected to drop 12% and 40%, respectively, by the close of FY 2011, and the third would increase only 15%.

What brought about the decline in dismissal remands? OAO prepared desk guides for ALJs summarizing procedures for handling dismissals due to failure to appear, when hearing requests aren't timely filed, and dismissals at the claimant's request. Appeals Council members presented the dismissal guides and refresher sessions to ALJs attending the 2010 and 2011 Annual National Judicial Educational Program (ANJEP) in Falls Church/Alexandria (OAO newsletter 10/22/10, p. 3).

Appeals Council members also held discussions with small groups of ALJs on reasons for remands. In addition, the Office of the Chief Administrative Law Judge circulated a memo on Sept. 29, 2010, to regional chief ALJs reiterating dismissal rules as spelled out in several HALLEX sections.



The ODAR Office of Appellate Operations publishes the Executive Director's Broadcast generally every other week. To see past issues, go to the OAO newsletter searchable archive on the SSA Intranet.

In our next issue:
[To be published on September 9, 2011]

- Baltimore Offices Help Power OAO Public Service Mission
- Plus much more.

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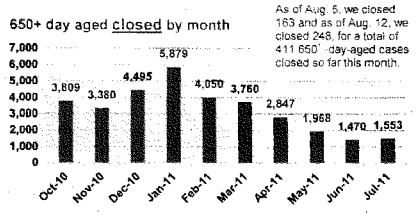
EXHIBIT #20

Progress Towards FY 2011 Goals

(4th Quarter, FY 2011)

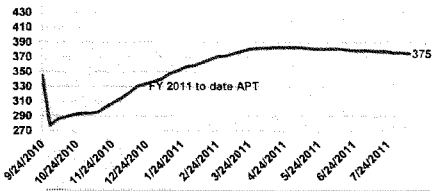
Progress in Reducing RR Cases That Are Now or Will Be 650 Days or Older by the End of FY 2011

We began Fiscal Year 2011 with 34,275 cases that would become 650 days old if not processed by the end of the fiscal year. In other words, OAO had 34,275 cases that had been pending for more than 285 days at the start of the fiscal year. Our monthly progress is shown below. By 08/12/2011, there were 1,235 cases actually 650 days or older.



RR FY 2011-to-Date Average Processing Time

Request for review average processing time (APT) per week peaked in the middle of the fiscal year as we addressed the cases projected to be 650 days or older by end of the fiscal year. Our goal for RR APT is 370 days.



OAO Staff Profile

[illegible]

Technology Tip – Graphics: Are you looking for graphics to illustrate a concept in a report or PowerPoint presentation? Try the SSA Graphics Library. It offers symbols, drawings and photos in 28 categories from awards to USA.

ODAR LDP Brings Management Experience to Appeals Officer

With a long track record of production-oriented work, Appeals Officer Klara Huesers wanted to explore her interest in experiencing responsibilities at the management level. Her opportunity came with acceptance into the 2010-2011 ODAR Leadership Development Program (LDP), which was open to attorneys hired on an "excepted service" basis.

Huesers had long familiarity with disability adjudication at the case level since she joined the Minnesota Disability Determination Service as a disability examiner. After a dozen years there, she accepted a position with SSA in August 2006 as a Federal reviewing official and most recently served as an AO in Branch 13 in Falls Church. Under her ODAR LDP, she's performed three assignments, all of which provided a broader perspective of ODAR and OAO's functions and a different work environment. Her three assignments were:

- Office of the Chief Administrative Judge (OCALJ) as acting executive assistant reporting to then-Deputy Chief Administrative Law Judge JoAnn L. Anderson and where Huesers gained valuable experience working in a front office environment. "It was totally different" from the insular nature of production, she says. For example, she experienced receiving large volumes of e-mail, leading her to learn strategies for organizing and filing it and managing responses. "It was a sink or swim environment," she says.
- An assignment with ODAR's Dallas office as acting deputy regional management officer exposed Huesers to the field of labor-management relations. She supervised a legal team that responded to grievances and other issues in the region and helped develop methods for addressing grievance and performance issues on a continuing basis and monitoring their status.
- Her last assignment returned Huesers to Falls Church where she served as acting deputy director of the Division of Finance and Budget Analysis, supervising three branch chiefs. She learned budget terminology, provided a fresh set of eyes for review of budget and other reports, assigned work, helped troubleshoot staffing issues, and pursued employee development opportunities for staff.

The ODAR LDP has been "a wonderful opportunity to try out things you think you might be interested in or find things you never thought you'd be interested in," she said. It also enhanced her skill set and understanding of ODAR's varied responsibilities.

"Any opportunity you have to get management or front office experience, take it," Huesers recommends to her OAO colleagues. "The earlier in your career you do it, the better. The advantage is that you will learn some of the basics of management at a lower level" where the scope of responsibilities is narrower than at upper levels of ODAR or SSA. Since the next ODAR LDP round hasn't been scheduled, she suggests signing up for details as another way of broadening your experience and finding new professional areas of interest.

☆ ☆ ☆

Endocrine Disorders Remain Impairments After Listing Update

Citing significant advances in diagnosis and treatment of endocrine disorders over the past 26 years, SSA adopted a major revision in the medical evaluation criteria for the disorders, which cause hormonal imbalances that can lead to a wide range of medical problems. After June 7, 2011, all endocrine disorders – including diabetes mellitus (DM) and thyroid, pituitary and adrenal gland disorders – no longer can serve as the sole ground for a disability finding for adults and children, except for children under 6 who require daily insulin, according to the updated listing regulation. (There's also a video on demand prepared by the Office of Medical Listings Improvement.)

For OAO analysts and Appeals Council adjudicators, the most frequent application of the endocrine listing (9.00/109.00) occurs in reviewing ALJ findings for steps 4 and 5 of the evaluation process. Even though most endocrine disorders were, in effect, delisted, they remain potential medically determinable impairments and their complications can contribute to exertional, postural, environmental, visual, manipulative and even mental limitations associated with a variety of other body systems such as cardiovascular, renal, mental, neurological and visual, points out Division I Chief AAJ Gabriel DePass. Analysts and adjudicators should review the ALJ's residual functional capacity (RFC) finding to ensure it reflects these limits when they're supported by the medical evidence of record (MER).

For example, a thyroid disorder may cause blood pressure and heart rate changes resulting in arrhythmia (abnormal heart beat) and exertional limitations because the claimant cannot handle the stress of lifting heavy objects. A pituitary gland disorder may result in an electrolyte imbalance (and eventual diabetes), leading to muscular fatigue and balance problems, preventing claimants from working on a ladder. With diabetes, an individual who has hypoglycemia (abnormally low blood sugar level) may have seizures or cognitive deficits, inhibiting operation of machinery.

As Judge DePass notes, endocrine disorders also can affect cognitive functioning. "Mental conditions are interesting because a lot of us don't think about them," he says. "When you have a hormone imbalance or imbalance in electrolytes, in particular, it can affect a person's mood. A person may get grumpy and irritable, causing social limitations, or suffer short-term loss of memory."

When evidence of endocrine disorders appears in the MER, analysts and adjudicators should scrutinize the ALJ's evaluation of a claimant's credibility and subjective statements relating to his or her general feeling. "The claimant may say his whole metabolism is off and that he's fatigued, depressed or sleepy," Judge DePass says. Those complaints, if supported by the record, should be reflected in RFC limitations and the claimant's ability to perform past relevant work or other work. For example, a claimant suffering from fatigue would not qualify for a job driving a bus.

All hearing office actions (favorable decisions, denials and dismissals) dated on or after June 7 should evaluate endocrine disorders under the new rules. The endocrine listing change also could factor into analysis of a request for review of an ALJ action based on the legal principal of *res judicata* (see OAO newsletter 7/22/11).

Employee Benefits Information System (EBIS)

You may be interested in an online retirement seminar that is now available through the Employee Benefit Information System (EBIS). According to Bob Gehlken of the Falls Church office of the Center for Personnel Policy and Staffing, the EBIS provides all permanent SSA employees access to benefit information as well as information regarding their own benefits. A Personal Statement of Benefits provides projected retirement benefits, information regarding disability retirement, early-out retirement, death-in-service survivor benefits, health and life insurance coverage, and leave balances. An annuity calculator is available where you may enter various retirement dates and high three average salaries to aid in financial planning. In addition, EBIS provides information on the effects of the Windfall Elimination Provision, if applicable. Finally, the system has the ability to estimate future Thrift Savings Plan balances, rates of return, and annuity payments based on your personal TSP information and allocations. You can access EBIS via the intranet at work from the Quick Tools Chart on the OPE Portal. In addition, you may access the EBIS over the intranet from your home computer at this link. For first-time EBIS users, it is suggested that you enter via the OPE Portal as helpful hints and instructions are provided when logging on from this location.

Analyst Tip – Prototype States: As the Appeals Council works more cases across jurisdictions, analysts need to know the differences between prototype and non-prototype states. When claimants move in or out of any of the 10 "prototype" states – Alabama, Alaska, California (LA West and North Branches), Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York and Pennsylvania – their prototype or non-prototype status goes with them. In prototype states, the claimant receives an initial determination, skips the reconsideration level and can request a hearing as the next level of appeal. In non-prototype states, the claimant is entitled to a reconsideration determination after an initial determination, and must have a reconsideration determination before requesting an ALJ hearing. This policy (left over from 1990s era disability design test) plays an important role when you analyze a request for review of an ALJ dismissal of a hearing request. For example, an ALJ should dismiss a hearing request from a claimant who moves to Michigan from Indiana after receiving a denial at the initial level because the claimant has not yet gone to the reconsideration level as required in Indiana. The claimant's relocation to Michigan doesn't allow the claimant to forego the reconsideration level even though Michigan has none, since the originating status stays with the claim.

For a handy table showing when claimants are entitled to a hearing, see HALLEX I-2-4-99.

OFFICE OF APPELLATE OPERATIONS

EXECUTIVE DIRECTOR'S BROADCAST

Volume 3, Special Edition – Quality Review **January 13, 2012**

Executive Director: Judge Patricia A. Jonas
Deputy Executive Director: Judge Gerald Ray
Executive Officer: Vanessa G. Butler

OAO staff may submit suggestions for consideration to: |||ODAR OAO Admin Services.

THE FOUR PILLARS OF DISABILITY ADJUDICATION AND REVIEW

- Due Process of Law
- Factual Accuracy
- Policy Compliance
- Timely Service

In this Special Edition (Click on links below to go to):

- *Division of Quality Brings New Data, Insight to Disability Process*
- *"Focused Quality Reviews" Enhance DQ's Mission*
- *What the Data Reveals So Far*
- *DQ Plans ALJ Participation*
- *DQ Dives Deep into Quality Data*
- *DQ Sampling Method Seeks Objectivity*
- *Top 10 Reasons for Remand of Unappealed Hearing Decisions*
- *RR/DQ Differences: Favorable Decision Brevity Puts More Focus on Record*
- *DQ Own Motion Review Timeline*
- *Absence of Substantial Evidence Triggers Own Motion Review*
- *"How MI Doing?" Gives ALJs Easy Access to Remand Data*
- *Q&A on Disability Adjudication Consistency*

Division of Quality Brings New Data, Insight to Disability Process

In its first full fiscal year of operation (FY 2011), OAO's Division of Quality (DQ) Appeals Council members exercised own motion review of 22% of the 3,692 favorable hearing decisions they reviewed while allowing the remainder to proceed to effectuation. Of own motion cases closed at the end of FY 2011, the Council issued 550 remands and 73 favorable, 57 partially favorable and 5 unfavorable decisions, with 128 cases pending responses from claimants (see charts, page 2). These results, however, represent only one dimension of DQ's quality review mission (see Focused Reviews, p. 1).

As Division Chief AAJ Robert Johnson describes DQ's role: "We define quality broader than whether the hearing decision is right or wrong." DQ leverages OAO's national perspective and position at the end of the administrative review process to generate and analyze data never before available to SSA on unappealed hearing decisions.

These data and analyses will help SSA identify patterns of decisional shortcomings and suggest topics for training programs and the possible need for policy clarifications or procedural adjustments. They also will lend insight into state disability determination service (DDS) versus hearing level decision-making that could lead to granting disability benefits at the DDS level, thereby reducing claimant wait times and appeals.

As DQ staff review unappealed decisions by administrative law judges (ALJs) and hearing office senior attorney adjudicators (SAAs), they enter extensive information into the Appeals Review Processing System (ARPS), providing SSA with a fresh data perspective of its disability process. These data detail everything from the most recent DDS decision and procedural, evidentiary and residual functional capacity (RFC) issues to how the hearing level adjudicators used medical and vocational experts. (For details on DQ's data sampling methodology, see story on p. 3.)

(See Division of Quality . . . on p. 2)

ALJ Courtesy Copy

As a courtesy to agency administrative law judges, we provide a copy of this special issue of the OAO *Executive Director's Broadcast*. It describes the operation of the OAO Division of Quality, which conducts pre-effectuation reviews of thousands of favorable ALJ decisions a year.

To provide feedback, ALJs may address an e-mail to |||ODAR OAO Admin Services.

"Focused Quality Reviews" Enhance DQ's Mission

In addition to its sampling of pre-effectuation reviews, the Division of Quality (DQ) conducts focused, post-effectuation reviews in certain circumstances, with several goals in mind. These goals include: identifying recurrent decisional issues for incorporation into future focused training; identifying where changes may be needed in policy articulation or in hearing office procedures; and helping ALJs and hearing offices to provide service to the public in the form of quality adjudication and decisional articulation.

These goals are accomplished not only by identifying general patterns but also by taking a closer look at what underlies outlier statistics. ODAR can use information gleaned from these "focused quality reviews" (FQRs) to develop training programs, materials, tools, or software to support ALJs and hearing offices in overcoming problems that are identified and in providing public service at the consistent, policy-compliant level that adjudicators and managers across ODAR seek to maintain.

(See Focused Review . . . on p. 4)

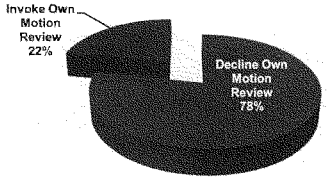
The ODAR Office of Appellate Operations publishes the Executive Director's Broadcast generally every other week. To see past issues, go to the OAO newsletter searchable archive on the SSA Intranet.

Permanent Subcommittee on Investigations
EXHIBIT #21

What the Data Reveals So Far

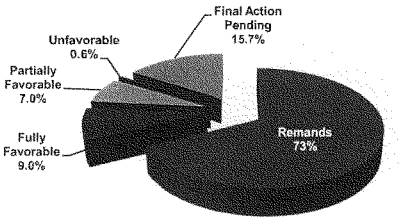
FY 2011 Division of Quality Own Motion Review Rate

In its FY 2011 review of favorable hearing decisions, the Division of Quality (DQ) invoked "own motion review" for about 22% to perform further review, which resulted in Appeals Council remand orders or corrective decisions (see chart below). For cases where the AC declined own motion review, effectuation proceeded to pay benefits to claimants.



FY 2011 Dispositions by Division of Quality

Remands constituted the largest portion of AC actions taken under own motion review in FY 2011. Corrective decisions accounted for 17% of AC actions.



Division of Quality . . . from p. 1

One example: DQ staff collect data on cases where an ALJ or SAA approved a disability claim based on the same evidence that the DDS used to deny it. "We look to see whether the decision issued at the hearing level could have been issued earlier," says Judge Johnson. "Quality involves a timeliness factor, too – not just giving the right decision but giving it as soon as possible. Could that decision have been issued earlier? If so, why wasn't it? Was it evidence that came in, was it just a difference based on the same evidence? That's what we're starting to collect."

Trends in Step 3 versus Step 5 decisions provide another example of DQ's contribution to understanding disability policies' effect on adjudicator actions. Of the decisions DQ reviewed in FY 2011, hearing offices decided cases at Step 5 (ability to perform other jobs) versus Step 3 (medical impairment deemed disabling) at about a 4-1 ratio, a disparity that surprised Judge Johnson. "In days gone by, there were more Step 3 decisions. I think Step 3 grew harder to use as a basis for a favorable decision as we added functionality and evaluation of credibility" (see OAO newsletter 2/18/11, p. 3). DQ collected information on 657 Step 3 and 2,833 Step 5 decisions. As a new source of data and insight on this issue, DQ staff are participating in a recently formed SSA workgroup examining what factors result in Step 5 allowances.

As with ALJ decisions reviewed by OAO disability program branches, evidentiary support of the RFC constitutes the biggest portion of problems in favorable decisions for which DQ invokes own motion review. "One of the reasons is the frequent use of inability to sustain working eight hours a day," says DQ Division Director Carmine Borrelli. "That's become a catch-all for a lot of adjudicators in these cases. They often don't point to any evidence indicating the claimant has these limitations." Use of this finding also avoids the need for a vocational expert. "What we envision is giving feedback to the agency saying this is an issue that needs to be clarified. It's not being applied properly and consistently."

DQ Broadens Goals for FY 2012

Based in OAO's Crystal City, Va., offices, DQ consists of four support staff members, five managers, 46 attorney-adviser analysts, five appeals officers and seven administrative appeals judges. DQ recently added 12 new attorney advisers and plans to expand the number of cases it reviews, Borrelli says. In addition to reviewing unappealed favorable decisions in FY 2012, DQ may extend its efforts by reviewing unappealed dismissals, the effectiveness and clarity of AC remand orders, and compliance with those orders.

DQ Plans ALJ Participation

The Division of Quality plans to include ALJs in its review process during FY 2012. Two ALJs would help review and adjudicate cases during a series of 120-day details. Division Chief AAJ Robert Johnson says he and other OAO staff remember the positive experiences they had working with ALJs on the now-terminated Decision Review Board (see OAO newsletter 5/6/11). "You learn from each other," Judge Johnson explains.

"ALJs have a perspective that we don't always know or appreciate." Incorporating ALJs into DQ's peer review also offers an external benefit. "If you have an ALJ and AAJ that did the case review together and determined that own motion was necessary, that gives you an additional measure of credibility," he says. "ALJs also can see in the course of four months a substantial number of decisions written by other ALJs and share what they learned with their hearing offices. It's a win-win all around."

DQ Dives Deep into Quality Data

The type of data the Division of Quality collects shows how its mission extends beyond review of individual cases. In fact, the July 2011 ARPS update boosted the number of fields in the DQ case analysis tool to about 100 so DQ could collect even more data. OAO will share analysis of these data with other SSA components to help shed light on possible areas of improvement of the disability adjudication process.

In addition to numbers of effectuations allowed, remands and Appeals Council decisions, other examples of data DQ collects and analyzes include:

- **Variances between the 10 regions in the rate of effectuations, remands and AC decisions.** By sampling at least 3,500 decisions, DQ obtains data that are statistically valid to the regional level. It began sampling Boston region favorable decisions after the June 13, 2011, termination of the Decision Review Board.
- **How much time DQ review adds to the effectuation process.** Review of a favorable ALJ or SAA decision delays its effectuation to give DQ staff time for analysis and deciding whether to invoke own motion review. In FY 2011, DQ review added only 23 days on average to cases where it decided to allow effectuation to proceed without own motion review.
- **Decisions by hearing office SAAs as well as ALJs.** In FY 2011, DQ took a higher percentage of own motion reviews for SAA decisions – by 5 percentage points – than for ALJ decisions. Since SAAs make only on-the-record decisions, the lack of a hearing to help resolve issues such as earnings contributed to higher review rates, DQ found. Other factors included not addressing onset dates that invaded the period of a prior claim, and basing a decision on the Medical-Vocational Guidelines but not considering transferability of skills when claimants had held skilled or semi-skilled jobs. As with ALJs, the most prevalent issue with SAA decisions was lack of medical evidence in support of RFC findings.
- **Whether decisions involving certain impairments are more prone to error.** DQ tracks primary and secondary impairments that pose the greatest problems to ALJs and SAAs for reaching legally sufficient decisions.
- **The impact that use of a medical expert (ME) has on legal sufficiency of step 3 decisions and use of the vocational expert (VE) has on step 5 decisions.** This data collection effort may indicate whether the rate of DQ effectuations, remands and decisions varies by whether an ALJ took testimony from an ME or VE.
- **How often hearing decisions do not properly address work activity after onset.** DQ found 191 instances of this problem in FY 2011. Often during own motion review, representatives submitted evidence of earnings that helped DQ adjudicate the case, sometimes in the claimant's favor.

DQ Sampling Method Seeks Objectivity

In selecting a sample of favorable hearing decisions for review, the Division of Quality takes a simple, straight-forward approach. It accesses the hearing level's Case Processing and Management System and usually selects every tenth favorable decision in each region at a rate of four a day and about 70 a month. The quality review work group, OAO Executive Director's Office staff and the Office of Systems developed this system to ensure that DQ obtains an objective sample, without identification of individual ALJs, hearing offices or allowance rates.

Review of favorable ALJ decisions became a subject of contention after Congress approved the 1980 "Bellmon Amendment" to the Social Security Act, which resulted in a review program that initially targeted high allowance ALJs. In 1984, Congress amended the Act to terminate the Bellmon review because of concerns about its effect on ALJ decisional independence. Unlike Article 3 judges, the judicial independence of ALJs is constrained by agency policies that are binding on the ALJs.

DQ adjusts the rate of cases produced by its sampling approach when it needs to manage the size of its in-coming case workload. DQ staff work under a tight deadline that requires them to determine within 60 days whether to invoke own motion review. "We have parameters that we set that control the flow of cases so that we are not inundated and cannot get to them all," explains Division Director Carmine Borrelli. "If we need cases quicker, we can increase the number per day. If we are getting overloaded, we can decrease that number."

Top 10 Reasons for Remand of Unappealed Hearing Decisions

The list below shows the top 10 reasons in descending order for Appeals Council remands in FY 2011 of favorable hearing level decisions. At the end of FY 2011, Council members serving with the OAO Division of Quality had issued 550 remands. There are 170 reasons for remand; any remand can have up to three reasons associated with it.

- RFC – exertional limitations inadequately evaluated
- RFC – mental limitations inadequately evaluated
- Claimant credibility – failed to discuss appropriate credibility factors
- RFC – other (articulation issues)
- Drug or Alcohol Abuse – insufficient articulation of DAA rationale
- RFC – non-mental non-exertional limitations inadequately evaluated
- Incomplete/inaccurate record – record inadequately developed
- Onset date/closed period/CDR
- RFC – effect of combination of impairments inadequately evaluated
- Treating source – recontact necessary.

Focused Review . . . from p. 1

When DQ finds, based on its sampling of pre-effectuation cases, that there is a much higher-than-average rate of own motion review for an ALJ or hearing office, then it may conduct FQRs to evaluate what may be a problematic pattern in the adjudication of disability cases. OAO also selects subjects for FQRs based on analyses of other agency data. OAO is working with the ODAR Division of Management Information and Analysis, as well as the SSA Office of Quality Performance, to develop algorithms to improve the selection process for additional FQRs.

After completing the FQR, DQ reports its data and findings (but no recommendations) to the Office of Chief Administrative Law Judge and ODAR executives for whatever educational or other executive action they deem appropriate.

Since DQ began performing FQRs in the spring of 2011, it has completed about 16 for ALJs and SAAs and about three for hearing offices. "Our focused reviews don't involve our DQ adjudicators," notes Division Director Carmine Borrelli. "We don't want them involved because it is post-effectuation. We're not taking own motion review, we're just trying to see if we can identify any trends or issues that might be problematic or require a reminder or training for a judge or hearing office."

The Appeals Council's own motion review authority (20 CFR 404.969 and 416.1469) prohibits sampling cases based on "the identity of the decisionmaker or the identity of the office issuing the decision," so the Council does not take adjudicative actions regarding specific cases reviewed under the post-effectuation focused review of cases.

Teams of DQ managers and attorney-adviser analysts perform the focused quality reviews, which take about four to five days each. Once a team selects an FQR subject, it screens a sample of 60 to 80 cases for a random period against several criteria, collecting data and information that might reveal issues of concern or patterns that may conflict with agency policies or regulations. Some criteria that may be included are how many decisions are on the record, how many are bench decisions, how long the hearing lasted, whether claimants submitted additional evidence after the state agency determination, and whether the file includes opinion evidence from treating, examining or non-examining sources. DQ staff then conduct a more in-depth review of about 25% of screened cases and report on those findings.

Focused quality reviews, for example, have identified several judges that rely solely on opinion evidence received at the hearing level. "The ALJ doesn't evaluate it or evaluate whether it is consistent with the other evidence, which is required before the opinion evidence can be given controlling weight, and finds that claimant is disabled. In many of these cases, the opinion evidence was not supported and was inconsistent with the other evidence of record," Borrelli says. As for hearing offices, an FQR found that one office used the same two medical experts in about 80% of cases instead of selecting them on a rotational basis. "In that case, we did a referral to the Chief ALJ's office to let them know we've found this pattern." In other studies, DQ found that hearing offices did not follow other agency policies and procedures in the assignment of cases.

DQ staff begin each FQR with an open mind "not expecting to find anything," Borrelli adds. "What we find, we find. Then we report it. We don't have any agenda behind what we're doing. We're just trying to make sure that the agency issues consistent decisions and follows proper procedures, regulations and the law so that the people who should be found disabled are and the people shouldn't be aren't. That's our goal."

RR/DQ Differences: Favorable Decision Brevity Puts More Focus on Record

Reviewing favorable ALJ or SAA decisions makes for a different experience than reviewing requests for review (RR), OAO analysts and adjudicators have learned. DQ Division Chief AAJ Robert Johnson, who has more than a dozen years experience adjudicating RRs, spelled out the differences he's seen:

- **Favorable decisions are shorter**, with about two to three pages or less of rationale compared with two or three times that amount in ALJ denial decisions. Shorter decisions tend to mean briefer descriptions and evaluation of the medical evidence, including medical source opinions, and less rationale explaining the nexus between the medical evidence and the RFC. "Sometimes you have to reconstruct the rest of the decision to figure out the basis for the ALJ's finding of the RFC before you can ask whether it is supported by substantial evidence."

- **DQ staff can find themselves taking benefits away from claimants** because the record doesn't support a favorable decision and doesn't even require a remand. "You have to prepare for a different mindset," Judge Johnson says. In

(See RR/DQ Differences . . . on p. 5)

DQ Own Motion Review Timeline

During various periods in its history, the Appeals Council has conducted own motion review of favorable hearing decisions. Launched at the end of FY 2010 (see OAO newsletter, 9/17/10, p. 3) after 10 months of planning, the Division of Quality made history as the first OAO component dedicated solely to own motion review, which it performs under 20 CFR 404.969 and 416.1469. Since DQ's work deals with decisions where claimants already have received a favorable disability decision, regulations specify a unique timeline for Appeals Council action:

- **60 days after the hearing decision:** The Council must decide whether to review the decision on its own motion. DQ attaches an alert to the electronic case file notifying other SSA components not to effectuate payment until the Council acts.

- When it opts for own motion review, the Council sends claimants and all affected parties a notice explaining the reasons and setting a **25-day deadline** for submission of additional evidence or written statements.

- **110 days after the hearing decision:** The agency begins paying interim (but not retroactive) benefits if the Council hasn't released the case for effectuation, issued a corrective decision, or remanded the case to the hearing office and it has not issued a new decision. If the Council issues an unfavorable decision or the ALJ does so on remand, the agency will not regard interim benefits as overpayments.

To assist field offices and payment centers in understanding how it operates, DQ added a frequently asked questions page to the OAO Intranet website.

RR/DQ Differences . . . from page 4

FY 2011, that happened in only five cases, however. Actually, he was surprised by the number of more-favorable, corrective decisions that DQ judges issued by approving an earlier onset date when supported by the medical evidence. Often in these cases, DQ analysts and adjudicators discovered that the hearing level found a claimant disabled during a period covered by a prior determination but didn't reopen it to address its earlier onset date.

- **DQ analysts and adjudicators see fewer briefs** or contentions to help identify issues, including errors of law, since the decisions they review are favorable. Representatives sometimes submit statements in response to own motion notices but the number has been smaller than expected.

- **Every case has a deadline of 60 days** from the ALJ's or SAA's decision (or ALJ dismissal of a hearing request when an SAA issues a favorable decision) for the Appeals Council to decide whether to conduct further review and decision-making on its own motion or allow effectuation to proceed.

- **Analysts produce more detailed remand orders** that draw content from own motion notices. These labor-intensive notices explain to claimants at length why the Appeals Council will assume jurisdiction over their case for further review and how it may affect them.

"In response to our own motion notices, sometimes claimant representatives submit medical evidence and we will issue a favorable decision based on their submission," Judge Johnson says. "A number of cases have gone back to ALJs who have held a hearing and gotten additional development, which supported a favorable decision. So I'd caution people about looking at own motion review as an indication that the decision was wrong."

Absence of Substantial Evidence Triggers Own Motion Review

What prompts OAO's Division of Quality Appeals Council members to take own motion review of an unappealed hearing decision under 20 CFR 404.969 or 416.1469? They use this criterion: Whether the case record shows the decision is supported by substantial evidence (HALLEX I-3-3-4). If two AAJs agree there's a lack of substantial evidence, then the case undergoes further review and a possible remand or corrective decision (see DQ Own Motion Review Timeline, page 4).

This approach often means that Council members allow effectuation of a favorable ALJ or SAA decision even though it may not sufficiently discuss the evidence or articulate the reasons for a finding of disabled. If the adjudicators' review nonetheless finds sufficient evidence in the record that supports the finding, the Appeals Council won't invoke own motion review. For example, an ALJ could make an error of law by not properly discussing evidence of a claimant's drug or alcohol abuse (DAA), but if the record supports a disability finding regardless of the DAA, then the Council would not take own motion review.

"How MI Doing?" Gives ALJs Easy Access to Remand Data

As one of its key missions, OAO shares disability adjudication data it collects with other SSA components for uses they deem appropriate for their missions. A case in point: ODAR has launched a web-based system called "How MI Doing?" (HMID) that gives every ALJ a quick look at several types of data including Appeals Council remands issued under the Council's own motion and requests for review authorities. Called "How MI Doing?" (HMID), the system allows ALJs to compare their personal workloads and productivity against the average of all ALJs in their hearing office, their region and nationally, updated daily.

The remand data that ALJs see come from information that OAO staff enter into the Appeals Review Processing System (ARPS). These data now appear as HMID bar chart displays showing ALJs all 10 remand categories, top 10 remand reasons in each category and the top 20 reasons across all remand categories. ALJs can see data for Appeals Council remands, court remands or a sum of them for their hearing office, region and nationally.

While ALJs conceivably could have accessed remand data previously, it would have taken a lot of time and effort, says Jeffrey Liu, Ph.D., senior advisor, ODAR Office of Electronic Services and Strategic Information. Since the rollout on Aug. 9, 2011, following seven months of testing and fine-tuning, ALJs nationwide can simply click the appropriate MI menu items on their desktop to display HMID data and rankings. They cannot yet see their personal remand data and rankings for several reasons, including the need to build a data history and track and adjust for ALJ relocations between hearing offices.

Personal data that ALJs do see include their pending, dispositions, average processing time – for the week, month and fiscal year to date – and hearings scheduled for the coming three full months. ALJs do not see comparisons to individual ALJs in their hearing office, but see themselves compared to averages for all the office's ALJs (including themselves). The system follows the same principle for comparisons to each ALJ's region and in the nation. HMID also delivers productivity data to hearing office decision writers (DWs). It similarly provides a graphical display that compares and ranks the number of decisions they drafted against the average for all DWs in their hearing office, and against regional and national averages. "Management wants people to know – this is where you are," Liu says.

See the next page for a Q&A discussion with Deputy Executive Director Gerald Ray on disability adjudication consistency.

Judge Gerald Ray Addresses Disability Adjudication Consistency

The Office of Appellate Operations is the home of the Appeals Council and serves as the final administrative step in the SSA disability adjudication process, reviewing more than 130,000 hearing level decisions across the country. SSA now has added pre-effectuation review of favorable hearing decisions to OAO's responsibilities. Gerald Ray, OAO deputy executive director and an administrative appeals judge, offered the following answers to OAO newsletter staff questions about the reasons behind OAO's newest mission.

Q ***Did recent press articles and the July 2011 TRAC study on inconsistencies in disability adjudication prompt SSA to establish the new program to review favorable hearing-level decisions?***

A No. We stood up the Division of Quality (DQ) more than seven months before these articles and the study were published – not in response to them. The articles and the TRAC study point to wide disparities in ALJ decisional patterns. In fact, the TRAC study contended that obtaining a favorable Social Security disability hearing decision depended more on the judge than the facts of the case. SSA created DQ because there was no pre-effectuation review of favorable decisions, which constitute the bulk of hearing decisions (about 60% in FY 2011). The agency is obligated to administer the disability program in an even-handed manner. Any unfairness in adjudication undermines public confidence in the agency, and undermines the credibility of the program and the people who administer it.

Q ***How is it possible to achieve even-handedness in hearing decisions when claimants and their circumstances differ so much?***

A Social Security law and regulations provide the framework for ensuring that applicants for disability receive the benefits of due process of law, correct identification of the issues and adequate consideration of relevant evidence, all resulting in appropriate decisions.

Q ***Administrative law judges and senior attorney adjudicators each adjudicate hundreds of cases a year. People often use heuristics to deal with complex issues, so couldn't they help reach a decision in a disability case?***

A People frequently use heuristics, or rules of thumb, to form a mental framework to simplify consideration of issues, often based on their experience in dealing with similar problems. Properly crafted heuristics can effectively speed up the process of correctly dealing with complex issues. However, use of inartfully crafted heuristics to view a problem in a customary or traditional manner may result in framing issues too narrowly, over-reliance on incomplete information, and limiting consideration of options only to those that have worked in the past, or interpreting information only in a manner consistent with the preconception connected with the heuristic. Thus, heuristics may interfere with appropriate decision-making.

Q ***What has DQ found in its reviews of favorable hearing level decisions?***

A Analysis suggests that most ALJs, SAAs and other agency adjudicators increased dispositional output in accordance with agency production goals; however, both random and focused reviews of favorable hearing decisions strongly suggest that some decision-makers rely on heuristics that are not compliant with the current law, regulations and policies of the agency. Thus, we see that some decisions are not supported by substantial evidence.

Q ***What is the goal of focused quality reviews?***

A I believe that nearly all ALJs are conscientious in deciding cases and want to do a good job. Our ALJs have quasi-judicial independence, which prohibits the agency from telling ALJs whether to find a claimant disabled or not disabled. Our ALJs are professionals, ready to take self-corrective action when they receive appropriate feedback and consistent messaging regarding quality. We believe the information obtained through DQ analyses will provide valuable insights in development of analytical tools and training the agency can provide to improve disability adjudication and ensure that its adjudicators fairly administer the disability program.

Fiscal Year 2011

Final Actions Report

Division of Quality

February 2, 2012

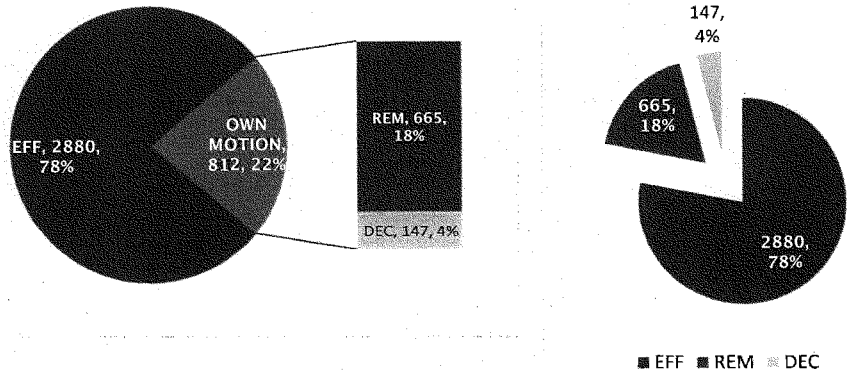
Permanent Subcommittee on Investigations
EXHIBIT #22

Overview of all Final Actions

The Division of Quality closed a total of 3692 cases initiated in fiscal year 2011. Of those cases, 3564 became final by the end of fiscal year 2012, and 128 closed in fiscal year 2012. The Council effectuated 2,880 cases (no action taken), remanded 665 cases, and issued a decision on 147 cases.

	Own Motion				
	EFF	REM	DEC	OM Total	Total Cases
# Cases	2880	665	147	812	**3692**
Overall Proportion	78%	18%	4%	**22%**	

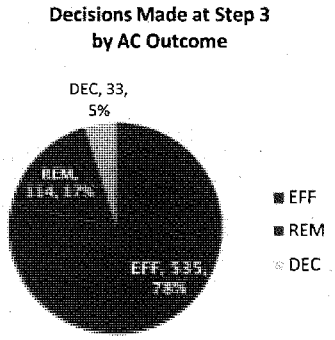
Breakout of Disposition Type

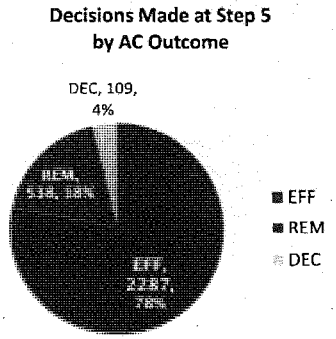


Decisions By Sequential Evaluation Step

A total of 3616 cases (98% of the 3692 decisions reviewed) were decided at either step 3 or step 5 of the sequential evaluation process. The Council effectuated 78% of the cases at both steps.

	Own Motion			
	EFF	**REM**	**DEC**	**Total**
Step 3	535	114	33	682
% total Step 3	**78%**	**17%**	**5%**	**100%**
Step 5	2287	538	109	2934
% total Step 5	**78%**	**18%**	**4%**	**100%**

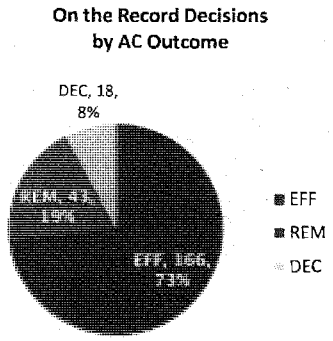


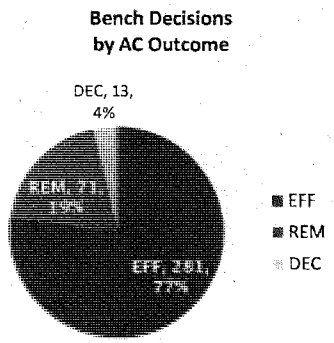


Decisions By Type (OTR vs. Bench)

A total of 592 decisions (16% of the 3692 decisions reviewed) were either decided on the record (6%) or issued as a bench decision (10%). The Council took own motion on 27% of the decisions issued on the record and on 23% of the bench decisions.

	Own Motion			
	EFF	**REM**	**DEC**	**Total**
OTR	166	43	18	227
% OTR	**73%**	**19%**	**8%**	**100%**
Bench	281	71	13	365
% Bench	**77%**	**19%**	**4%**	**100%**

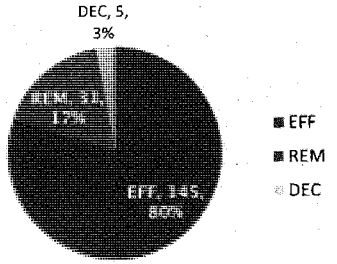




Child SSI Decisions

The Council reviewed a total of 181 (5% of the 3692 decisions reviewed) child supplemental security income decisions and took own motion on 36 (20%) of them.

	Own Motion			
	EFF	REM	DEC	Total
Child SSI	145	31	5	181
% Child SSI	80%	17%	3%	100%

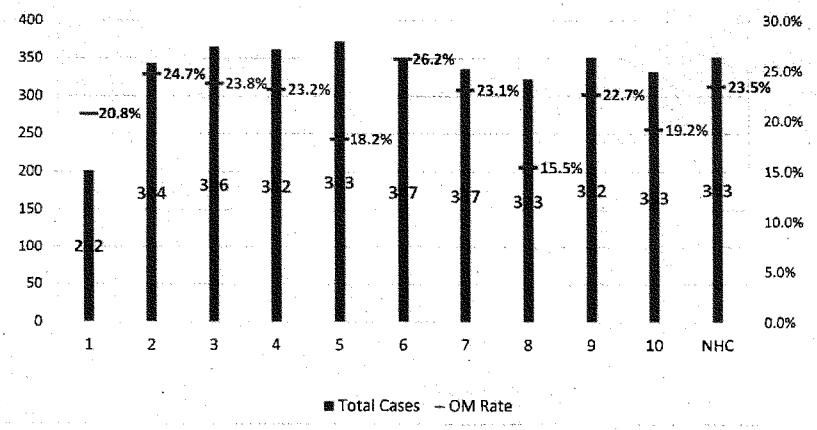


Own Motion Rate by Region

As stated above, the Council took own motion on 22% of the 3692 decisions reviewed. The regional own motion rate ranged from 15.5% (Region 8) to 26.2% (Region 6), with an average rate of 22% and an overall rate of 22%.

		Own Motion			
Region	EFF	REM	DEC	OM Rate	Total Cases
1	160	34	8	20.8%	202
2	259	75	10	24.7%	344
3	279	72	15	23.8%	366
4	278	72	12	23.2%	362
5	305	57	11	18.2%	373
6	256	77	14	26.2%	347
7	259	61	17	23.1%	337
8	273	39	11	15.5%	323
9	272	60	20	22.7%	352
10	269	53	11	19.2%	333
NHC	270	65	18	23.5%	353
Total	**2880**	**665**	**147**	**22.0%**	**3692**

Total Cases and Own Motion Rate by Region



Regional Own Motion Rate by Adjudicator

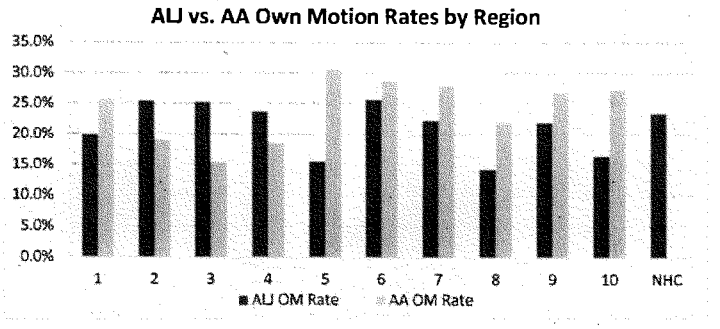
Of the 3692 decisions reviewed by the Council, 3164 (86%) were issued by an Administrative Law Judge (ALJ) and 528 (14%) were issued by an attorney advisor (AA). The own motion rate for AA decisions was 24.6% versus 21.6% for ALJ decisions. The own motion rate for ALJ decisions varied from 14.3% (Region 8) to 25.8% (Region 6). The own motion rate for AA decisions varied from 15.5% (Region 3) to 30.8% (Region 5).

ALJ Decisions by Region and AC Action

		OM			
Region	EFF	REM	DEC	OM Rate	Total Cases
1	140	28	7	20.0%	175
2	221	66	10	25.6%	297
3	230	63	15	25.3%	308
4	243	64	12	23.8%	319
5	260	38	10	15.6%	308
6	219	63	13	25.8%	295
7	223	50	14	22.3%	287
8	234	30	9	14.3%	273
9	234	48	18	22.0%	300
10	208	31	10	16.5%	249
NHC	270	65	18	23.5%	353
Total	**2482**	**546**	**136**	**21.6%**	**3164**

AA Decisions by Region and AC Action

		OM			
Region	EFF	REM	DEC	OM Rate	Total Cases
1	20	6	1	25.9%	27
2	38	9	0	19.1%	47
3	49	9	0	15.5%	58
4	35	8	0	18.6%	43
5	45	19	1	30.8%	65
6	37	14	1	28.8%	52
7	36	11	3	28.0%	50
8	39	9	2	22.0%	50
9	38	12	2	26.9%	52
10	61	22	1	27.4%	84
Total	**398**	**119**	**11**	**24.6%**	**528**



Nature of Decisions Issued by the AC

As stated above, the Council issued a decision on 147 (4%) of the 3692 cases reviewed by the Council. The Council issued a less favorable decision in 28% of the decisions. In 22% of the decisions, the Council changed the basis of the disability finding, but not the overall outcome. The Council reopened a prior determination or decision in 21% of the decisions.

Type of Decision	#	%
Reopened prior determination or decision (onset date invaded prior period)	31	21%
Changed the basis, but not the outcome, of the decision	32	22%
Found an earlier onset date	14	10%
Other favorable decisions	10	7%
Upheld determination or decision after receipt of further information (SGA)	7	5%
Corrected errors in onset and application dates	7	5%
Issued less favorable decision	41	28%
Issued fully unfavorable decision	5	3%
Total:	**147**	

Reasons Cited for QRB Remands, FY2012

Cited Remand Reason	Times Cited	% of Total
SGA	**63**	**3.8%**
Employee - Income Calculation	1	0.1%
Employee - Unsuccessful Work Attempt	2	0.1%
Employee - Other	2	0.1%
Income - Further Development	5	0.3%
Issues / Period Properly Before Alj Were Not Decided	1	0.1%
Self-Employed - Income Calculation	7	0.4%
Self-Employed - Other	3	0.2%
Self-Employed - Unsuccessful Work Attempt	1	0.1%
SGA - Consideration Of Entitlement To Twp / Epe	2	0.1%
SGA - Consideration Of Uwa And / Or Irwe, Etc.	4	0.2%
SGA - Evaluation Of Employee Criteria	2	0.1%
SGA Evaluation Of Self - Employment Criteria	7	0.4%
SGA - Unexplained Earnings After Eod	26	1.6%
Severe/ Non-Severe	**130**	**7.8%**
Cardiovascular Impairment Not Adequately Considered	5	0.3%
Combination Of Impairments Not Considered	7	0.4%
Endocrine System Impairment Not Adequately Considered	1	0.1%
Genitourinary Impairment Not Adequately Considered	1	0.1%
Impairment Improperly Found "Not Severe"	11	0.7%
Mental Disorder Not Adequately Considered	40	2.4%
Multiple Body Systems Impairment Not Adequately Considered	1	0.1%
Musculoskeletal Impairment Not Adequately Considered	17	1.0%
Neurological Impairment Not Adequately Considered	2	0.1%
Obesity Impairment Not Adequately Considered	8	0.5%
Other	35	2.1%
Special Senses And Speech Not Adequately Considered	2	0.1%
Adult Listings	**115**	**6.9%**
Listing 1.00 - Not Adequately Addressed Or Evaluated	27	1.6%
Listing 11.00 - Not Adequately Addressed Or Evaluated	4	0.2%
Listing 12.00 - Insufficient Articulation Of "B" Or "C" Criteria	15	0.9%
Listing 12.00 - Not Adequately Addressed Or Evaluated	49	2.9%
Listing 14.00 - Not Adequately Addressed Or Evaluated	1	0.1%
Listing 2.00 - Not Adequately Addressed Or Evaluated	2	0.1%
Listing 3.00 - Not Adequately Addressed Or Evaluated	4	0.2%
Listing 4.00 - Not Adequately Addressed Or Evaluated	1	0.1%
Listing 9.00 - Not Adequately Addressed Or Evaluated	3	0.2%
Other Adult Listings Issue	9	0.5%

Reasons Cited for QRB Remands (cont'd)

Cited Remand Reason	Times Cited	% of Total
Child Listings	**14**	**0.8%**
Listing 100.00 - Not Adequately Addressed Or Evaluated	2	0.1%
Other Child Listings Issue	12	0.7%
Credibility Evaluation	**142**	**8.5%**
Claimant Credibility - Failed To Acknowledge Unavailability Of Treatment	2	0.1%
Claimant Credibility - Failed To Discuss Appropriate Credibility Factors	97	5.8%
Claimant Credibility - Other Issue	35	2.1%
Third Party Credibility - Finding Not Made	2	0.1%
Third Party Credibility - Inadequate Rationale For Finding	6	0.4%
Opinion Evidence Evaluation & RFC	**779**	**46.6%**
Consultative Examiner - Opinion Not Identified Or Discussed	31	1.9%
Consultative Examiner - Opinion Rejected Without Adequate Articulation	20	1.2%
Consultative Examiner - Recontact Necessary	5	0.3%
Consultative Examiner - Weight Accorded Opinion Not Specified	5	0.3%
Non-Examining Source - Opinion Not Identified Or Discussed	11	0.7%
Non-Examining Source - Opinion Rejected Without Adequate Articulation	28	1.7%
Non-Examining Source - Weight Accorded Opinion Not Specified	1	0.1%
Non-Medical Source - Opinion Not Identified Or Discussed	2	0.1%
Non-Medical Source - Opinion On Issue Reserved To Agency	1	0.1%
Rfc - Effects Of Combination Of Impairments Inadequately Evaluated	48	2.9%
Rfc - Exertional Limitations Inadequately Evaluated	213	12.7%
Rfc - Mental Limitations Inadequately Evaluated	163	9.7%
Rfc - Non-Mental Non-Exertional Limitations Inadequately Evaluated	71	4.2%
Rfc - Other	76	4.5%
Treating Source - Opinion Not Identified Or Discussed	22	1.3%
Treating Source - Opinion On Issue Reserved To Agency	5	0.3%
Treating Source - Opinion Rejected Without Adequate Articulation	13	0.8%
Treating Source - Recontact Necessary	61	3.6%
Treating Source - Weight Accorded Opinion Not Specified	3	0.2%
Past Relevant Work	**31**	**1.9%**
Function By Function Analysis Not Adequately Articulated	9	0.5%
Other	22	1.3%

Reasons Cited for QRB Remands (cont'd)

Cited Remand Reason	Times Cited	% of Total
Grid/ Vocational Expert	**118**	**7.1%**
Misapplied Framework - Improperly Considered Non-Exertional Limitations	4	0.2%
Misapplied Framework - Improperly Considered Skill Level / Transferability	11	0.7%
Misapplied Framework - Other	5	0.3%
Misapplied Framework - Reliance On Ssr Was Incorrect Or Incomplete	1	0.1%
Misapplied Grid Rule - Improperly Considered Age Category	2	0.1%
Misapplied Grid Rule - Improperly Considered Education / Literacy	2	0.1%
Misapplied Grid Rule - Improperly Considered Non-Exertional Limitations	2	0.1%
Misapplied Grid Rule - Improperly Considered Skill Level / Transferability	17	1.0%
Misapplied Grid Rule - Other	2	0.1%
Miscellaneous - Decision Mischaracterizes Hypo Or VE Response To Hypo	4	0.2%
Miscellaneous - Other	4	0.2%
Miscellaneous - VE And DOT Not Reconciled	4	0.2%
Miscellaneous - VE Evidence Not Addressed In Hearing Decision	1	0.1%
VE Hypo - Other	4	0.2%
VE Hypo Did Not Encompass All Impairment	2	0.1%
VE Hypo Inconsistent With Exertional RFC Established	3	0.2%
VE Hypo Inconsistent With Mental RFC Established	1	0.1%
VE Not Obtained - Manipulation Limitations Warrant VE Evidence	7	0.4%
VE Not Obtained - Mental Limitations Warrant VE Evidence	6	0.4%
VE Not Obtained - Other	34	2.0%
VE Not Obtained - Postural Limitations Warrant VE Evidence	2	0.1%
Dismissal/ Procedural	**12**	**0.7%**
Other	11	0.7%
Res Judicata Dismissal	1	0.1%
Misc.	**268**	**16.0%**
Acquiescence Ruling Improperly Or Not Applied	3	0.2%
ALJ Misconduct / Unfair Hearing	1	0.1%
Drug Or Alcohol Abuse - Da / A As Material Factor To Disability	30	1.8%
Drug Or Alcohol Abuse - Insufficient Articulation Of Da / A Rationale	84	5.0%
Drug Or Alcohol Abuse - No Finding Of Disability	2	0.1%
Incomplete / Inaccurate Record - Lost / Inaudible Recording	2	0.1%
Incomplete / Inaccurate Record - Lost Record / Evidence	1	0.1%
Incomplete / Inaccurate Record - Record Inadequately Developed	62	3.7%
New Evidence Presented Upon Administrative Appeal / Review	2	0.1%
Non-Disability Issues	1	0.1%
Onset Date / Closed Period / CDR	62	3.7%
Other	18	1.1%
Grand Total	**1,672**	**100%**

Questions from Subcommittee Staff Regarding Issues Raised At the September 13, 2012 Hearing On Improving the Quality of Disability Benefit Award Decisions

1) **Please explain why the agency no longer allows DDSs or ALJs to procure a Minnesota Multiphasic Personality Inventory ("MMPI") exam and provide any related directives or documentation. If the agency prohibits the procurement of any other symptom validity tests, please include the policy and reasoning behind that decision as well.**

We no longer purchase symptom validity tests such as the MMPI because there is no test that, when passed or failed, conclusively establishes a claimant's credibility. While a definitive statement regarding credibility would make an adjudicator's job easier, the MMPI cannot provide it; therefore, using it may cause the adjudicator to ignore the totality of evidence, as required, and issue an incorrect decision.

Additionally, tests such as the MMPI have weaknesses in their psychometric properties that limit their consistent applicability in our program. For example, the MMPI is generally inappropriate for use with persons who have English as a second language, who cannot read at the eighth-grade level, or who have a low IQ.

While we no longer purchase validity tests, claimants or their representatives continue to submit them in support of a claim. We plan to seek external expertise to evaluate our policy and provide additional guidance to help our adjudicators determine how to best handle these tests if they are in the medical record.

2) **Please also provide the following annual information for the past five years:**
   - **Number of times a DDS decision-maker or ALJ requested an MMPI or other symptom validity test; and**
   - **Annual amount spent by the agency on these exams.**

We do not track the incidence of requests for symptom validity tests or the costs specifically associated with their purchase.

3) **Please provide information regarding the data the agency plans to capture regarding outlying ALJs, as well as an explanation as to how it plans to use that data for future reviews.**

In recent years, we've made progress in capturing structured data at all adjudication levels so that we can identify areas for improvement and make changes based on objective data instead of anecdotal information. Regarding recent improvements in hearing level data, the Office of Appellate Operations (OAO) created and uses the Appeals Review Processing System (ARPS), a case processing system that captures structured data on ALJ decisions. ARPS data, which helped

Permanent Subcommittee on Investigations
EXHIBIT #23

identify 170 reasons for remand, serve as the foundation to determine whether ALJs are correctly applying the applicable decisional framework.

Although ARPS captured structured data on claimant-requested appeals of unfavorable or partially favorable ALJ decisions beginning in 2008, OAO started examining deficiencies in fully favorable ALJ decisions in 2010 when OAO's Division of Quality (DQ) was reinstituted to take own-motion reviews in fully favorable ALJ decisions. With the combination of data from ARPS on different case outcomes, as well as more traditionally captured data from the Office of the Chief Administrative Law Judge like the number of dispositions, allowance rates, and the length of time cases spend awaiting ALJ decisions, we now have access to information that helps identify policy non-compliance. As we gain experience with these data, we will reevaluate what more we need. When we identify anomalies, we take a closer look to determine the appropriate course of action to address the issue.

In 2011, we instituted focused post-effectuation reviews performed by specially-trained DQ staff to help provide insight into identified anomalies. When DQ staff receives a topic for a focused review, they analyze a minimum of 60 decisions and perform in-depth reviews on 25 percent of the analyzed cases to determine if the ALJ correctly applied the law, our regulations, and our internal business processes. DQ staff reports data on each of the decisions they review and provides their findings to ODAR executives. Based on the findings, ODAR executives can determine the appropriate course of action, including training, counseling, or reminders about relevant law, agency policy, or guidance.

While we continue to perform additional focused reviews, we are also providing more individualized feedback, enhanced training, and additional electronic resources to our ALJs. The combination of each of these approaches is improving the quality of ALJ decisions.

For many years, concerns and misunderstanding about the scope of ALJs qualified decisional independence made the agency hesitant to take action on issues related to quality. That is no longer the case. Our improved training and comprehensive quality reviews are improving compliance with policies and procedures. The vast majority of our ALJs strive to make the right decisions and to treat the public fairly. The tools we have recently implemented provide them better training and feedback so that they can achieve these goals, and we believe that we have made significant progress towards improving our decision-making. However, if after counseling and training, an ALJ is not following our policies and procedures, such as not appropriately managing his or her docket, then we pursue appropriate disciplinary action with the Merit Systems Protection Board (MSPB). Recently, the MSPB issued a decision finding that there was "good cause" to remove an ALJ from his position because of his failure to acceptably manage his cases by not scheduling a sufficient number of hearings and issuing an acceptable number of decisions when compared to his peers in the hearing office and other hearing offices in the region.

4) Please provide an explanation as to the varying error rates among the different regions.

The Appeals Council's (AC) remand rates are not the same as case "error" rates—a remand means the AC identified a legal deficiency but does not always mean that the AC necessarily

disagrees with the ALJ's ultimate decision to deny or allow the case. Also, some issues can be outside of the ALJ's control, such as the submission of late evidence.

There are a number of factors that contribute to the variances in the remand rates between the regions. For example, remand rates may be affected by differences in development of the record at the DDS level, diversity in regional economies (i.e., rural and urban), disparity in the type of work available in different regions, the frequency and occurrence of certain types of impairments in regions, the number of non-English speaking claimants in regions, and the size of regions. Some of the variances in regional remand rates may be due to how ALJs apply the decisional framework or if they stay current with the decisional framework. We are working to ensure ALJs issue quality decisions.

In an effort to ensure ALJs issue quality decisions, we continue to improve training programs and create better individual feedback tools, such as "How MI Doing?" This resource gives ALJs extensive information about their remands as well as information on performance in relation to other ALJs in the office, region, and Nation. Currently, we are developing training modules related to each of 170 identified reasons for remands that we will link to the "How MI Doing?" tool. Further efforts to promote quality decisions include a test pilot of the Electronic Bench Book (eBB) for our ALJs. The eBB is a web-based tool that aids in documenting, analyzing, and adjudicating a disability case in accordance with our regulations. We designed the tool to improve accuracy and consistency in the disability evaluation process.

As previously noted, the DQ oversees quality by performing focused post-effectuation reviews of hearing offices, ALJs, representatives, doctors, and other subjects. We identify potential subjects for focused reviews based on data collected through agency systems, findings from pre-effectuation reviews, and internal and external referrals from various sources regarding potential non-compliance with agency regulations and policies.

Through improved training, development of new electronic tools, and quality assurance efforts, we are improving ALJ compliance with the controlling decisional framework, which should reduce regional variances that are within our control.

5) Please explain why the Department of Labor's O*NET database is not sufficient to use for disability claims, as well as any documentation of this decision.

Currently, O*NET does not measure strength and physical requirements in a way that our disability rules require. Our regulations and program policies contain specific definitions of the physical exertion requirements of work in the national economy, and classify jobs as sedentary, light, medium, heavy, and very heavy. O*NET does not measure work using these definitions. Additionally, regulations provide specific definitions of skill requirements that we use to assess whether a disability claimant can adjust to other work that exists in the national economy. For example, the regulations define unskilled work as a job a person can usually learn to do in 30 days. O*NET does not contain data at this level of detail.

We believe that there are aspects of O*NET that we can use. We are currently working with the Department of Labor's Bureau of Labor Statistics (BLS) to determine if they can meet our data needs.

Using the names, descriptions, and tasks of occupations in the O*NET system as a starting point, we are working with BLS to test the feasibility of using the BLS National Compensation Survey platform to collect additional information on strength, specific vocational preparation, and non-exertional requirements necessary for our disability programs.

Chapter 8 of the National Academy of Sciences report on O*NET (http://www.nap.edu/catalog.php?record_id=12814) extensively discusses our past research and views over the last decade or more.

In addition, our Occupational Information Development Advisory Panel issued a review of the National Academy of Sciences report on O*NET (see attached document titled, "Complete - Findings Report OIDAP 062810") and included questions and answers with National Academy of Science staff on issues about O*NET.

[SEE ATTACHMENT]

6) **Please provide an explanation and detailed cost justification of the estimated $108 million the agency plants to spend to create a new database to be used by SSA in determining disability claims.**

We previously estimated the cost of developing our own database for a new Occupational Information System at $108 million over five years; however, several months ago we modified our approach.

In FY 2012, we signed an interagency agreement with BLS for approximately $400,000, which funded research planning activities to test the collection of data on strength, specific vocational preparation, and non-exertional requirements using the specific definitions and measurements required by our regulations for a broad set of occupations. In FY 2013, we negotiated a separate agreement for about $11 million to fund the test.

7) **Please provide for each ODAR hearing office the rate at which the Office of Appellate Operations Division of Quality exercised "own motion" review. This should include, but is not limited to, the following hearing offices: Oklahoma City, Oklahoma; Roanoke, Virginia; and Montgomery, Alabama.**

The Appeals Council collects this information on a regional basis but not for individual hearing offices because its analysis would not be statistically significant at that level. In FY 2011, the Appeals Council reviewed 3,692 cases for possible own-motion review. Given the review of a relatively small random selection of favorable decisions nationwide, the regional level is the smallest denominator at which we could assess findings that are statistically significant. As noted in the Subcommittee's minority report, the regional own-motion rates for the identified hearing offices were:

- Dallas Region, 26.2%;
- Philadelphia Region, 23.8%; and
- Atlanta Region, 23.2%;

8) Finally, the Senators requested the agency provide a response to each of the recommendations in the Report.

We will provide this information as an insert to the hearing transcript, as requested by the Subcommittee.

Occupational Information Development Advisory Panel

Findings Report:

A Review of the National Academy of Sciences Report

A Database for a Changing Economy:

Review of the Occupational Information Network (O*NET)

June 28, 2010

Report to the Commissioner of Social Security

OCCUPATIONAL INFORMATION DEVELOPMENT ADVISORY PANEL REVIEW OF

THE NATIONAL ACADEMY OF SCIENCES 2010 REPORT
*A DATABASE FOR A CHANGING ECONOMY: REVIEW OF THE OCCUPATIONAL INFORMATION NETWORK (O*NET)*

Executive Summary

Based on a January 2010 request from the Social Security Administration (SSA), the Occupational Information Development Advisory Panel (OIDAP or Panel) reviewed the National Academy of Sciences (NAS) report, *A Database for a Changing Economy: Review of the Occupational Information Network (O*NET)*,[1] for relevance and lessons learned useful to SSA's development of an occupational information system (OIS) to replace the aging *Dictionary of Occupational Titles* (DOT) in the disability adjudication process. The OIDAP describes the background of the request, the OIDAP methodology for reviewing the O*NET Report, its findings and lessons learned, and offers SSA areas for consideration.

Common Ground: NAS Panel and OIDAP Areas of Agreement

1. **The NAS panel's review of the use of the O*NET in disability adjudication reached the same conclusion as that of other national governmental bodies, the OIDAP, and SSA in that the O*NET in its current form is not suitable for disability adjudication.**[2] (See pp. 7-8 of this report)

2. **The NAS and OIDAP reports reached the common conclusion that significant changes would need to be made to the O*NET in order for it be suitable for disability adjudication.** For example, changes to the O*NET content model, the Behaviorally Anchored Rating Scales (BARS), and the level and unit of analysis would all be required. These changes would involve a costly revalidation of the entire O*NET system and have the potential of negatively impacting the ability of the O*NET to serve the purposes for which it was designed. (See p. 8 of this report)

3. **The O*NET Report included a variety of important conclusions regarding occupational database maintenance that were similarly reached by the OIDAP for the OIS's development including:**

[1] Given how past and current studies of occupational databases are referred to by the audiences who may read this report, the OIDAP has chosen to refer to the O*NET review as being conducted by the NAS not by the National Research Council as it is also sometimes referenced.
[2] p. 161, National Academy of Sciences (NAS) report, A Database for a Changing Economy: Review of the Occupational Information Network (O*NET),

- **focusing on collecting, maintaining, and publishing high-quality data;**
- **considering input from the scientific and user communities on the research and usability processes;**
- **developing plans and procedures for refreshing the occupational database;**
- **using technology for communication or for the delivery platforms to users; and,**
- **exploring the use of Internet-based methods for developing an online user community.** (See p. 9 of this report)

4. **The NAS staff deferred to the expertise of the OIDAP for SSA's occupational data needs**. The NAS panel did not contain a subject matter expert in SSA disability adjudication, in private sector disability adjudication needs, or in the use of occupational information in disability applications in general. (See pp. 9-10 of this report)

Going Forth: OIDAP Areas of Future Exploration

5. **The application of O*NET in SSA's disability adjudication process would require SSA to change its definition of "skills" as well as the way skills are assessed in SSA's disability programs.** The manner in which O*NET defines skills and conceptualizes skills transference conflicts with SSA's disability program requirements, its regulatory definition of skills, and the regulatory rules by which skills are considered in disability claims. (See pp. 10-11 of this report)

6. **The O*NET is a general purpose database addressing the needs of the primary users (e.g., workforce development, economic development, career development, academic and policy research) for which it was designed. The disability adjudication data needs and purposes are very different and not a subset of the general purpose database.** (See pp. 11-16 of this report)

7. **The O*NET Report did not articulate the evaluation criteria that the NAS panel may have used for its evaluation of the O*NET.** (See p. 16 of this report)

8. **The forensic defensibility of using O*NET data for disability adjudication was not addressed by the NAS panel.** (See pp. 16-17 of this report)

Considerations[3]

Based on these findings, and our review of the O*NET Report in general, the OIDAP upholds its September 30, 2009 recommendations to SSA. The OIDAP further advises that SSA should consider:

Internal Expertise Unit

1. **Cautious progress on the R&D agenda for the OIS until the scientific expertise unit recommended by the OIDAP in its September report has been established.** As noted in the O*NET Report, developing a research agenda and its priorities would be advisable.

Information Sharing with Other Government Agencies

2. **Continued and expanded SSA and DOL cooperation on mutually beneficial areas, such as sampling and/or data collection. This cooperation may include examining how DOL has historically developed and used occupational data for its own labor-related adjudicative needs.**

3. **Collaboration with other Federal agencies, such as the Department of Defense, Office of Personnel Management, Rehabilitation Services Administration, and the Census Bureau, regarding work analysis methods or other studies, surveys, or information of value to the development of the OIS.**

[3] See pp. 17-18 of this report for discussion.

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Ethical and Legal Concerns Regarding O*NET and DOT

4. **Consideration of potential ethical and legal concerns that might arise from repurposing O*NET or by pursuing an update to the aging *Dictionary of Occupational Titles* framework for use in the disability adjudication process.**

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Introduction

At the OIDAP's inaugural meeting, Commissioner Astrue requested that the Panel provide the SSA with its content model and classification recommendations by the end of FY 2009. The Panel delivered the *Content Model and Classification Recommendations for the Social Security Administration Occupational Information System* report to Commissioner Astrue on September 30, 2009.[4]

As the OIS project transitioned into the research and development (R&D) phase, a January 19, 2010 letter from Commissioner Astrue requested further advice and recommendations from the OIDAP regarding the:

1. development of sampling and data collection plans for R&D;
2. creation of a process for recruiting job analysts, including methods for certification criteria and training;
3. assistance in establishing associations between human function and the requirements of work; and,
4. review of relevant documents or reports SSA identifies that may affect or inform its work on the OIS.

This report addresses a request made by SSA at the January 2010 quarterly meeting that the OIDAP review the NAS report, *A Database for a Changing Economy: Review of the Occupational Information Network (O*NET)* [5] (herein referred to as the "O*NET Report"). The purpose of the review was to examine data quality, sampling, and other issues that might be useful to the development of SSA's OIS.

The O*NET Report also contains topics that may be helpful to future OIS R&D activities. Thus, these technical topics will be addressed in subsequent OIDAP reports as appropriate, such as in the areas of measurement, sampling, data collection, and evaluation metrics.

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[4] Because of the OIDAP's Federal Advisory Committee Act status, subcommittees do not recommend directly to SSA, but to the OIDAP. These recommendations are deliberated and voted upon by the entire Panel. The subcommittee reports contained in the OIDAP's report appendices were finalized on September 1, 2009 for Panel deliberations and voting on September 16-17, 2009. Therefore, the recommendations by the OIDAP to Commissioner Astrue on September 30, 2009 are in the *Final Report and Recommendations* section, or the first 68 pages of the report, not in the appendices. The recommendations for the content model data elements were meant as a starting point for further development and refinement by SSA through the R&D process. The OIDAP report can be retrieved from http://www.ssa.gov/oidap/panel_documents.htm
[5] O*NET Report, Retrieved from http://www.nap.edu/catalog.php?record_id=12814

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Background

A decade after the release of the O*NET, the Employment and Training Administration of the US Department of Labor (DOL) commissioned a review of the database by the NAS. This was the first time in three decades that an independent body reviewed a civilian occupational information database in the United States since the NAS conducted a similar review of the DOT in 1980.[6]

The OIDAP applauds the DOL for opening the O*NET to user, stakeholder, and public review and critique. The process can only serve to strengthen the database for the workforce development and similar purposes for which it was primarily developed.[7]

OIDAP Methodology for Review of the O*NET Report

The Prepublication Copy/Uncorrected Proofs of the O*NET Report were released by the NAS to the public on December 4, 2009. On January 8, 2010, in their professional roles outside of the OIDAP, two Panel members (Mary Barros-Bailey, PhD and Mark Wilson, PhD) met with the NAS O*NET study staff to clarify factual inaccuracies in the O*NET Report. In addition, two Social Security Administration staff (Associate Commissioner Richard Balkus and Occupational Information Development Project Director Sylvia Karman) met with the NAS staff on January 12, 2010 to provide information regarding the disability adjudication process that was inaccurately reflected in the O*NET Report. At both meetings, the NAS staff indicated that only factual inaccuracies could be corrected because the O*NET review panel had already disbanded.

At the January 22, 2010 OIDAP quarterly meeting, the Panel discussed inviting NAS staff to present their findings at the next OIDAP meeting based upon SSA's request to the OIDAP to review the O*NET Report. Between quarterly meetings, the OIDAP Chair requested that the Panel review the O*NET Report in its entirety in preparation for a presentation by NAS staff at the next March quarterly meeting.

On March 25, 2010, Ms. Margaret Hilton, Study Director, and Mr. Tom Plewes, Associate Study Director at the NAS for the O*NET panel, presented to the OIDAP.

[6] This report is often called the "Miller Study." Retrieved from http://www.nap.edu/openbook.php?record_id=92&page=R1
[7] pp. 12, 24, 25, 36, and 37, Appendix B.

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See Appendices A and B for the NAS presentation materials and transcript. The final O*NET Report became available to the public and to the OIDAP on May 11, 2010. The preliminary report drafted by the OIDAP Chair was reviewed by the Executive Subcommittee on June 9, 2010 and deliberated upon by the full Panel on June 10, 2010.

A Word about Timing

An important insight arising out of the March 2010 presentation by Ms. Hilton and Mr. Plewes centered on the timing of the O*NET panel's deliberations and recommendations that were completed by the end of April 2009,[8] or five months before the OIDAP September 30, 2009 report was available.[9] Indeed, the NAS panel had disbanded by August 2009 – when their report entered NAS's internal review process. The O*NET Report was not released in the prepublication format until nearly three months after the dissemination of the OIDAP report. The timing of both panel processes and reports could lead to the mistaken impression that the NAS panel took OIDAP's findings and recommendations into account when it actually did not.[10]

The NAS staff referenced the OIDAP report and recommendations as an attempt to be complete in the literature citing;[11] however, the technical working papers and other research considered by the OIDAP, as well as the OIDAP report and recommendations, were never read or considered by the O*NET panel in its deliberations or when arriving at its recommendations. The NAS staff clarified the timing and referencing of the OIDAP report when presenting in March 2010 and via a footnote[12] in the final copy of the O*NET Report. Ms. Hilton indicated that, should the NAS panel have considered OIDAP's findings, these would presumably have affected their conclusions.[13] For a timeline of each panel's process, see Appendix C.

[8] p. 61, Appendix B.
[9] pp. 60, 129, and 130. Appendix B.
[10] pp. 16, 130-131, and 146, Appendix B.
[11] p. 61, Appendix B.
[12] p. 161, O*NET Report.
[13] p. 62, Appendix B.

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OIDAP Findings

Review of the O*NET Report by the OIDAP resulted in eight general findings that are detailed in this section.

Common Ground: NAS Panel and OIDAP Areas of Agreement

FINDING #1: The NAS panel's review of the use of the O*NET in disability adjudication reached the same conclusion as that of other national governmental bodies, the OIDAP, and SSA in that the O*NET in its current form is not suitable for disability adjudication.

Pages 11 and 12 of the OIDAP report identify the occupational data requirements of SSA's disability programs including the need to:

1. reflect national existence and incidence of work;
2. reflect work requirements;
3. be legally defensible; and,
4. meet the following technical, legal, and data requirements:
   a) occupations aggregated at a level to support individualized disability assessment;
   b) a cross-walk to the Standard Occupational Classification;
   c) precise occupationally-specific data;
   d) core work activities;
   e) minimum levels of requirements needed to perform work;
   f) observable and deconstructed measures;
   g) a manageable number of data elements;
   h) sampling methodology capturing the full range of work;
   i) inter-rater agreement justifying data inference;
   j) data collection of high quality data;
   k) valid, accurate, and reproducible data;
   l) whether core work activities could be performed in alternative ways; and,
   m) terminology that is consistent with medical practice and human function.[14]

[14] See SSA working papers *Developing an Initial Classification System* and *Social Security Administration's Legal, Program, and Technical/Data Occupational Information Requirements.* Retrieved from http://www.ssa.gov/oidap/panel_documents.htm and also see p. 50, Appendix B.

The NAS panel did not consider these occupational data needs for SSA's programs, as confirmed in their staff's presentation to the OIDAP in March 2010.[15] Like SSA and many other independent and government bodies that have previously arrived at the same conclusion (General Accounting Office, 2002a, 2002b; Institute of Medicine, 1998, 2002; OIDAP, 2009; Social Security Advisory Board, 2001), the O*NET Report[16] agrees that "... disability determination was an important use of the DOT and because O*NET was created to replace the DOT, it seems fair to conclude that O*NET has failed to replace the DOT in this particular usage." (p. 161, O*NET Report)

The NAS staff added that, "... we didn't look in-depth at this whole disability question. We took a quick look, and we thought it needed further study."[17]

FINDING #2: The NAS and OIDAP reports reached the common conclusion that significant changes would need to be made to the O*NET in order for it be suitable for disability adjudication.

Both the O*NET Report and the OIDAP conclude that a variety of measurement and scaling issues of descriptors in O*NET would be highly problematic for disability adjudication. The NAS staff and the OIDAP specifically focused on the application of BARS within the O*NET during the March 2010 NAS presentation.[18]

The O*NET Report correctly identifies the problematic issues (e.g., dichotomous definitions, complex terminology, confounded difficulty levels, no clear continuum, etc.)[19] associated with BARS in general, and specific to disability adjudication.[20] However, the staff could not identify a way in which these BARS could be changed with disability adjudication occupational information needs in mind without revalidating the entire O*NET database that cost $75M over the last dozen years, not including the cost of its development.[21] Neither could we. Future costs associated with the disruption this redesign would have upon the primary users identified by the O*NET's mission is incalculable. To the extent that SSA would

[15] p. 50, Appendix B.
[16] p. 161, O*NET Report.
[17] p. 78, Appendix B.
[18] pp. 30, 67-76, and 110, Appendix B.
[19] pp. 63, 74, 75, 76, 87, 166, 177, 196, O*NET Report.
[20] p. 30, Appendix B.
[21] pp. 69, 71, and 110, Appendix B. Note that on p. 71, Mr. Plewes indicated, "I don't believe you can fundamentally change the anchors and retain the system as it is. But the panel didn't look at that." The discussion on p. 110 indicates how changing the problematic BARS would mean having to revalidate the ratings across the entire O*NET system.

consider the use of BARS, it would need to ensure when and how BARS would be suitable for an OIS developed for disability adjudication.

FINDING #3: The O*NET Report included a variety of important conclusions regarding occupational database maintenance that were also similarly reached by OIDAP for the OIS's development including:

- ***focusing on collecting, maintaining, and publishing high-quality data;***
- ***considering input from the scientific and user communities on the research and usability processes;***
- ***developing plans and procedures for refreshing the occupational database;***
- ***using technology for communication or for the delivery platforms to users; and,***
- ***exploring the use of Internet-based methods for developing an online user community.***

FINDING #4: The NAS staff deferred to the expertise of the OIDAP for SSA's occupational data needs.

The NAS panel did not include a subject matter expert with a specialty in disability adjudication in the private or public sectors,[22] or in particular to SSA's disability program needs. On March 26, 2009, Ms. Sylvia E. Karman, the Director of the Occupational Information Development Project, presented to the NAS panel about the need for occupational information in SSA's disability programs.[23] Beyond the one-hour presentation, the NAS panel did not review or consider other currently-available working papers or reports specific to the occupational information needs for disability adjudication; therefore, during the March 2010 presentation to the Panel, the NAS study staff deferred to the OIDAP for expertise in the use of occupational information as pertinent to the disability adjudication process.[24]

The O*NET Report's first recommendation in Chapter 8 called for the development of an interagency task force whose first order of business would be to study SSA's occupational information needs. According to Mr. Plewes, this recommendation has

[22] p. 16, Appendix B.
[23] p. 160, O*NET Report.
[24] pp. 33, 55, and 59, Appendix B.

already been performed by the OIDAP's review.[25] Based on the review of SSA's needs, the OIDAP voted unanimously in 2009 that a new OIS was needed to replace the DOT in disability adjudication. O*NET was not recommended as that replacement.

Going Forth: OIDAP Areas of Future Exploration

FINDING #5: The application of O*NET in SSA's disability adjudication process would require SSA to change its definition of "skills" as well as the way skills are assessed in SSA disability programs.

The NAS panel cited various conflicting and confounding definitions of skills within the O*NET content model.[26] Broad conclusions regarding transferability of skill may make sense for the primary users of O*NET data, such vocational rehabilitation counselors who may need to consider broad brushstrokes of occupational information as a starting point in the vocational exploration process to which they may add other information (e.g., results of psychometric assessments or employer contacts) when developing a rehabilitation or return-to-work plan that may include educational or other vocational interventions to develop a client's or evaluee's vocational potential. However, the same conclusions are contraindicated for disability adjudication. For example, the O*NET Academy[27] describes a transferability of skill tool called TORQ that was used in Indiana to assist laid off workers in exploring skills transference to other work. The podcast describes a case of a recreational vehicle team assembler and finds transferability of skill to the work of a dental hygienist. This conclusion of transferability of skill is highly problematic for SSA as its process does not allow for considering retraining, accommodations, or other vocational rehabilitation interventions in disability adjudication.[28] The NAS panel did not consider transferability of skill within the disability adjudication process or how the design of the O*NET could results in data that could be highly problematic for work experience and transferable skills analyses at Steps 4 and 5 in the sequential evaluation process.[29]

[25] p. 33, Appendix B.
[26] p. 32, O*NET Report.
[27] O*NET Academy is accessible at http://www.onetacademy.com/faq/contentpartner.cfm
[28] pp. 116-117, and 120, Appendix B.
[29] p. 117, Appendix B.

The treatment of skills and skills transferability with the use of a general purpose database such as the O*NET could potentially result in inaccurate decisions and increased denials in the sequential evaluation process. Again, the O*NET was not designed to meet disability adjudication needs. Changing the O*NET for disability adjudication needs would make it problematic as a tool for the purposes for which it was created and where this kind of transferability of skills method may be helpful.

With respect to the issue of skills and skills transference in its September 2009 report, the OIDAP recommended data elements to include in the content model and data collection effort that best fit with the disability adjudication process. Specifically, by its recommendations, the OIDAP attempted:

> to distinguish the essential components of the definition of what a skill is and how a skills analysis or work experience analysis is performed and [to] separate them into those elements or processes for which occupational data could be gathered. By doing so, we are able to study the resulting data collected vis-à-vis current paradigms of how skills transfer or could transfer, as well as to provide the opportunity to potentially explore other methods that might result in greater face and predictive validity that are based on empirical data. We note that SSA uses the "transferability of skills analysis" at Step 5 in very limited circumstances. We mean to include the consideration of an individual's ability to do past work or other work as currently conceived by SSA (unskilled, semi-skilled, or skilled).[30] (p. 48, OIDAP Report)

FINDING #6: The O*NET is a general purpose database addressing the needs of the primary users (e.g., workforce development, economic development, career development, academic and policy research) for which it was designed. The disability adjudication data needs and purposes are very different and not a subset of the general purpose database.

<u>Different Missions, Different Users</u>

The assumption that the creation on an OIS would be parallel, duplicative, or redundant[31] to the existence of the O*NET is incorrect and does not consider the

[30] 20 CFR 404.1568(d) and 416.968(d) for SSA definition of skills and transferability of skills.
[31] p. 161, O*NET Report.

differing missions, user needs, purposes, or other design considerations of each occupational database. The NAS panel inferred the O*NET's mission as DOL needing to "[m]eet the competitive labor demands of the worldwide economy by enhancing the effectiveness and efficiency of the workforce development and regulatory systems that assist workers and employers in meeting the challenges of global competition." (p. 6, O*NET Report). On the other hand, the mission of SSA's OIS is to provide specific physical and mental job demands and measures that are directly related to SSA's evaluation of limitations resulting from disability claimants' impairments.

Consequently, unlike the OIS that is being developed by the SSA specific to one purpose – the disability adjudication process and the users specific to that system – the first paragraph of the O*NET Report states that the O*NET was developed by the DOL not only for use within some of its programs, but also for many users in the national economy identified as:

- workforce development
- economic development
- career development
- academic and policy research
- human resource management[32]

Because of the many users for which the O*NET content model was designed, its development of its design took considerably longer than is anticipated for the OIS's development. O*NET users utilize the general purpose[33] data as the starting point within their processes upon which further research and information may be required whereas the OIS needs to provide very specific information to assist decision-making at the n=1 level.

Different Purposes and Needs: Econometric v. Ergometric System Designs

Understanding the occupational data needs of specific users is important to concluding whether the O*NET fits that need well. For example, a RAND

[32] The O*NET Report states, "a primary goal of O*NET is to help state workforce development offices carry out their dual mission of assisting individuals in gaining challenging, rewarding work (and any required education and training) and assisting employers in recruiting, hiring, and developing skilled workers." p. 6. Also see pp. 12, 24, 25, 36, and 37, Appendix B.
[33] pp. 23, 25, 27, 29, 70, and 81, Appendix B.

Corporation study (Hansen, Campbell, Pearlman, Petho, Plewes, & Spenner, 2008) assessing the development of a common framework for the various military occupational information systems[34] concluded that:

> ... no single existing system is likely to be fully appropriate for DoD's needs .... All of the existing systems ..., including the O*NET, provide information that is too general and abstract. If DoD wishes to develop a uniform [occupational analysis] system applicable across the services, their components, and the civilian workforce, the need to build the system in-house seems inescapable. This is the only way it could be substantively meaningful to users and stakeholders.[35] (p. 20, Rand Report)

The O*NET Report and the 2008 report by the RAND Corporation both indicated that the design of an OIS is specific to its purpose. The RAND report best describes this initial and crucial decision in the development of any occupational database when it states:

> A major requirement for choosing among occupational analysis system options is understanding, in fairly specific terms, the objectives or purposes to be served by the system. Indeed, this understanding is needed before any truly meaningful discussion of key underlying systems concepts and issues can occur.[36] (p. xiii, Rand Report)

Further, the RAND panel posited:

> When considering alternative [occupational analysis] systems ... there are no unequivocally "right" or "wrong," or "better" or "worse," choices in the absence of specification of the system's intended purposes and applications. Each type of process, job descriptor category, and level of analysis has utility for different purposes and is therefore relatively more or less suitable for different applications. Specification of such purposes is in turn a function of the particular needs of potential users. Consequently, such needs must also be

[34] According to the RAND study, "The Army, Navy, Air Force and Marine Corps have separate occupational systems for their officers and enlisted workforces while the civilian workforces follow the patterns of the federal workforce and use that occupational system. As a result, DoD uses over 15 different occupational systems with over 6,000 occupational definitions.". (p. 32)
[35] RAND report. Retrieved from http://www.rand.org/pubs/technical_reports/2008/RAND_TR610.pdf
[36] RAND report.

> specified in some detail, or an [occupational analysis] system may not meet the needs for which it was developed. [37] (p. 14, Rand Report)

We agree. Thus, the purpose, program, data, technical, and legal requirements for the use of occupational information in SSA's disability adjudication process[38] were considered by the OIDAP in arriving at its conclusions and recommendations, but could not have been considered by the NAS panel because their members did not have access to that information at the time of their deliberation to consider such design questions as:

1. Descriptor coverage: work- and worker-oriented attributes;
2. Descriptor level of analysis: breadth or narrowness of descriptor definition;[39]
3. Descriptor application: work, workers, both;
4. Descriptor specificity: across all jobs and/or job specific;
5. Descriptor common framework needs; and,
6. Descriptor metrics or scales.

When considering how DOL and SSA need to answer these design questions based upon their distinct purposes and data needs, the OIDAP found the answers were fundamentally different.[40] The polarity in the design and data needs between the O*NET and an OIS for disability adjudication is important to comprehend. Without recognizing the needs of each primary user or user group, broad associations of descriptors – or the data collected with these – are meaningless. For instance, the O*NET Report states that there is:

> ... almost perfect equivalence between the O*NET descriptors of near vision, far vision, visual color discrimination, and depth perception and the RFC[41] assessment (descriptors of near acuity, far acuity, color vision, and depth perception). The scales and definition of scale points, however, are still quite different between the two scales. (p. 165, O*NET Report)

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[37] RAND report.
[38] p. 33, Appendix B.
[39] The unit of analysis for each occupational analysis purpose is distinctly different. For the O*NET, this unit of analysis is the occupation level. For SSA, to meet its burden of proof at Step 5 of the sequential evaluation process, the unit of analysis is at the job level. This essential design decision is critical to understand in understanding whether a system is designed econometrically or ergometrically.
[40] p. 66, Appendix B.
[41] p. 56, Appendix B indicates that the O*NET panel did not consider the MRFC in their review of the O*NET's use in disability adjudication.

For the casual observer who might not understand human function vis-à-vis sensory criteria, near vision may seem almost perfectly equivalent to near acuity and far vision may also seem almost perfectly equivalent to far acuity, when in reality they are functionally different. If these data elements are included in an occupational analysis system, their measurement with respect to work activity may not be adequately captured if the differences are not recognized by those designing the system.[42] The difference is not a matter of nuance; rather, it is a matter of understanding occupational data vis-à-vis its application in the disability context that involves the appropriate measurement of human function.

Understanding human function and disability is important to correctly determine appropriate occupational analysis design for database used in disability adjudication and to make decisions regarding the proper unit of analysis.. The O*NET does not use job level data collection that is essential to the disability adjudication process. The general purpose design of the O*NET was appropriate for the needs of its primary constituents, [43] but not as part of a forensic decision-making process requiring greater specificity and certainty in the person-job match that is central to the individualized assessment.

These essential differences in database designs are best illustrated by understanding econometric and ergometric occupational database system designs and which results in the data needed by users. See Appendix D for a model and table indicating the differences between econometric and ergometric designs in occupational analysis systems.

The O*NET's main constituency, workforce development users, identified a need for a higher level of aggregation than exists in the present O*NET.[44] The broad and more abstract data needs of workforce development users led to higher aggregation in O*NET, a result of an econometric design approach. These broader occupational categories are mostly aligned with the SOC and, thus, can be linked with other data collected at that level. However, this level of aggregation is counter to the needs of an OIS for disability adjudication.[45] This design feature of the O*NET is appropriate

[42] p. 31, Appendix B.
[43] p. 23, Appendix B.
[44] p. 37, Appendix B.
[45] pp. 55 and 108, Appendix B.

for workforce development, but not for disability adjudication that needs an ergometric design for data generalizability to a single individual – the claimant – not to the American workforce.[46]

Regarding the overall OIS framework, the OIDAP opined in its 2009 report that the creation of an OIS for disability adjudication did not mean starting from scratch, but building upon the best features of the DOT, the O*NET, and other occupational information systems to meet the purpose and needs for which the occupational data is required.[47] Insofar as the O*NET is tied to the Standard Occupational Classification (SOC) and the OIS should crosswalk to that classification as was recommended by the OIDAP, the SOC could serve as a shared bridge to anyone wishing to connect to the O*NET-SOC descriptor framework.[48] In its 2009 recommendation to SSA regarding an initial work taxonomy framework, the OIDAP Taxonomy and Classification Subcommittee utilized the dimensions associated with the O*NET and SOC work activities as part of its framework development. These dimensions constituted approximately 30% of the recommended taxonomy.

FINDING #7: The O*NET Report did not articulate the evaluation criteria that the NAS panel may have used for its evaluation of the O*NET.

Although the O*NET Report identifies how the NAS panel went about its charge,[49] it is unclear what evaluation criteria was used by the panel in its review of the O*NET. This might have been beneficial to the reader as it was with the 1980 NAS report reviewing the DOT.[50]

FINDING #8: The forensic defensibility of using O*NET data for disability adjudication was not addressed by the NAS panel.[51]

For human resources management applications discussed in Chapter 7 of the O*NET Report requiring the need to meet legal criteria, the O*NET was found not to be legally defensible for the same reasons it would not be defensible in disability adjudication. The O*NET was never designed to be forensically applied, nor does it

[46] pp. 37, 38, 103, and 109, Appendix B.
[47] p. 17, OIDAP report.
[48] p. 90, Appendix B.
[49] pp. 16-17, O*NET Report.
[50] See Miller, et al.
[51] pp. 57 and 88, Appendix B.

need to be for the purposes for which it was created. Furthermore, the NAS staff concluded that the various sources "... may or may not be the best representation of work that is performed ..."[52] although, as noted earlier, an important consideration for SSA's occupational data needs for legal defensibility is that it reflect national existence and incidence of work.[53]

Chapter 8 in the O*NET Report refers to a 2000 study by one of the O*NET developers, the American Institute of Research (Gustafson & Rose, 2003), that was commissioned by the SSA to review O*NET's suitability for use in disability adjudication. The article concludes that "a version of O*NET [could be] legally defensible and acceptable to decision-makers and claimants alike" (p. 15). It is unclear what premises were considered to arrive at this conclusion or if the need for ergometrically-derived data was evaluated vis-à-vis its application at the n=1 individualized assessment level. For instance, the article posits Static Strength as an example of a suitable descriptor among the 54 O*NET descriptors evaluated when SSA has routinely cited this descriptor as an example of a descriptor that is too holistic and abstract for disability adjudication purposes.

[52] p. 39, Appendix B.
[53] pp. 11-12, OIDAP report.

OCCUPATIONAL INFORMATION DEVELOPMENT ADVISORY PANEL
REVIEW OF

THE NATIONAL ACADEMY OF SCIENCES 2010 REPORT
*A DATABASE FOR A CHANGING ECONOMY: REVIEW OF THE OCCUPATIONAL INFORMATION NETWORK (O*NET)*

Additional Lessons Learned: Considerations for SSA

Of particular interest to the OIDAP was the timeline for the development of the O*NET. Because of the massive nature of the O*NET content model, the Advisory Panel for the Dictionary of Occupational Titles (APDOT) took three years to arrive at its recommendations to DOL. Eight years elapsed from the time of the APDOT's creation until DOL released its first prototype of the content model and data collection began.[54] By comparison, an OIS for SSA needs a simpler ergometrically-designed occupational analysis system with a content model inclusive of discrete descriptors, that will not require the massive undertaking of O*NET's development or the prolonged timeline. It does call, however, for a system that is designed to produce high quality, forensically-defensible data, which is a scientifically-based and designed product. General Recommendation Four in OIDAP's September 2009 report called for internal and external expertise for the development and maintenance of the OIS. As Ms. Hilton indicated, the vision for the development of the O*NET was also "... to have some permanent professional people within the Department of Labor who could oversee the development of a better and improved database for the future."[55] This type of unit was likewise recommended in 1980 with the NAS review of the DOT.[56] Such a unit has not historically existed within SSA. Because of the forensic nature of the SSA OIS, the OIDAP advises that SSA establish a steady but cautious research timeline. It further counsels against undue acceleration of the R&D agenda until the scientific expertise unit proposed in the September 2009 report has been created and the development of a plan and priority schedule for research is established.

The OIDAP understands SSA has been meeting with or briefing DOL about the OIS since before the OIDAP's inaugural meeting, including meeting with the Employment and Training Administration and more recently also the Bureau of Labor Statistics. Although it is clear that the purpose and needs of each occupational database are due to very different econometric v. ergometric design features, nonetheless, the OIDAP finds value in the O*NET Report's recommendation calling for increased cooperation between SSA and DOL possibly involving areas of sampling and/or data

[54] p. 45, Appendix B.
[55] p. 18, Appendix B.
[56] pp. 218-219 of the Miller, et al. study on the DOT recommended that "A permanent, professional research unit of high quality should be established to conduct technical studies designed to improve the quality of the DOT as well as basic research ..." and goes on to further describe the composition of the unit to include PhD-level scientists (e.g., sociologists, psychologists, statisticians, etc.), BA- or MA-level research assistants, and support staff.

collection that may be mutually beneficial to each agency. SSA may also wish to explore with DOL how that agency has historically developed, maintained, and applied the occupational data it collects for its own forensic and adjudicative needs (e.g., US Department of Labor, Office of Administrative Law Judges for labor-related immigration cases). SSA may consider the development of ethical standards, data protection, or other systems to safeguard the integrity of the occupational data it collects for its disability programs. SSA may also benefit from collaboration with other Federal agencies, such as the Department of Defense, Office of Personnel Management, Rehabilitation Services Administration, and the Census Bureau, regarding work analysis methods and other information of value to the development of the OIS.

Lastly, the OIDAP raises concerns regarding potential research and assessment ethics[57] and legal considerations in repurposing the O*NET. The same concerns hold true in applying the aging *Dictionary of Occupational Titles* to the disability adjudication process without regard to updated and current research, psychometric, and technology opportunities to meet the specific occupational data needs implied by the individualized assessment process. Until an occupational information system is developed that can meet individualized assessment purposes, and despite the DOT's flaws, today it still remains, "... the most comprehensive set of occupational characteristics currently available."[58] (p. 195, Miller Study)

[57] See the research and assessment standards in the codes of ethics for the American Counseling Association, American Psychological Association, and the Commission on Rehabilitation Counselor Certification.
[58] See pp. 173 and 195, Miller, et al.

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Acknowledgements

We appreciate the fortunate timing a review of the O*NET presents to the OIDAP when we are at the genesis of providing SSA with our advice and recommendations regarding the OIS's R&D. We are grateful for DOL's willingness to make the database available for professional and public review and critique.

The contents of this report are not meant as a criticism of the use of the O*NET for the primary purpose for which it was created and should not be interpreted as such. Based on our study and review of SSA's occupational information needs, the purpose of this report was to review lessons learned through the O*NET's database study by the NAS that might be helpful to our advice and recommendations to SSA. Emerging needs in the OIS's R&D process may warrant further review of the O*NET Report to inform OIDAP future discussion and deliberations on technical matters.

We especially appreciate the NAS panel's acknowledgement of the unique needs of SSA for occupational data that are not met with the econometric design of the O*NET. Despite having completed their recommendations and disbanding as a panel before they had the opportunity to review SSA working papers or OIDAP's recommendations, the NAS panel elevated the issue of occupational data specific to disability adjudication to a national level that has served to ultimately clarify the need for the development of an ergometrically-based OIS for SSA's disability adjudication process. We thank the NAS study staff for their graciousness and willingness to present to the OIDAP, and particularly for their inclusion of footnotes in the final report to settle potential misunderstandings conveyed by the timing of their process and the publication of their uncorrected proofs and final reports.

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Conclusions

Understanding the differences in occupational systems designs is inherently a technical subject. Casual observers who do not have intimate knowledge and understanding of work analysis as applied to the residual functional capacity of an individual may not grasp the nuances in system design and data quality, or how this may affect generalizability to the claimant in SSA's individualized assessment. We suspect that this chasm in knowledge will continue to occasionally bring those who do not understand why the O*NET and OIS designs are very different, almost complementarily so based on the needs of their primary users, to ask "Why not a "tweaked" O*NET for disability adjudication?"

As noted in our September report, "Undoubtedly, there are some aspects of the DOT and the O*NET occupational information systems that are helpful to the development of the OIS tailored to SSA's disability adjudication needs." (p. 19, OIDAP Report). Our recommendations in that report included some features of both systems that met SSA's legal, program, technical, and data needs and already considered 100% of the O*NET and SOC work activities in its recommended work taxonomy framework, or constituting about 30% of that recommended starting taxonomic framework. The recommendations went further by introducing features for the new OIS to allow it to function within the context of its forensic intent and application. What we learned from the O*NET Report serves to uphold our 2009 general recommendations and to provide additional insights to further assist with our mission as identified in our charter.

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APPENDIX

Appendix A: NAS Presentation Slides to the OIDAP

Appendix B: Transcript from the Occupational Information Development Advisory Panel Quarterly Meeting, March 25, 2010—Presentation of Margaret Hilton, Study Director and Senior Program Officer Center for Education, The National Academies and Mr. Thomas J. Plewes, Associate Study Director and Senior Program Officer, Committee on National Statistics, The National Academies

Appendix C: Timeline of NAS and OIDAP Processes

Appendix D: Econometric v. Ergometric Occupational Analysis Designs

TAB A

THE NATIONAL ACADEMIES

A Database for a Changing Economy: Review of the Occupational Information Network (O*NET)

Committee on National Statistics

Center for Education

THE NATIONAL ACADEMIES

National Academy of Sciences

National Academy of Engineering

Institute of Medicine

National Research Council

THE NATIONAL ACADEMIES

THE NATIONAL ACADEMIES

Study Charge from DOL

- Document and evaluate current and potential uses of O*NET in:
  - workforce development
  - HRM
  - research
- Explore linkage to SOC and other data sets

Study Charge

- Identify improvements, especially in:
  - currency
  - efficiency
  - cost-effectiveness
  - use of new technology

Panel Selection

- Consulted NRC standing committees and others to identify experts
- Balance of expertise, views of O*NET
- NAS President approved provisional slate
- Provisional slate posted for public comment
- Confidential bias and conflict discussion at first meeting
- Final approval of panel members

THE NATIONAL ACADEMIES

Panel Members

- Nancy Tippins (Chair), Valtera Corporation
- David Autor, M.I.T.
- John Campbell, University of Minnesota
- Keith Ewald, Ohio Job & Family Services
- Richard Froeschle, Texas Workforce Commission
- Les Janis, Georgia State University
- Virginia Lesser, Oregon State University
- Kerry Levin, Westat
- Kenneth Pearlman, Independent Consultant
- Ann Marie Ryan, Michigan State University
- Juan Sanchez, Florida International University
- William Shobe, University of Virginia

THE NATIONAL ACADEMIES

Study Process

- Literature Review
- Workshops in March and April
- Deliberation in closed sessions
- Draft enters NRC review process in August
- Response to Review approved in November
- Transmittal to DOL in November
- Public release of prepublication draft in December: http://books.nap.edu/catalog.php?record_id=12814
- Editing/technical corrections
- Final report in April or May

THE NATIONAL ACADEMIES

Prior NRC Studies

Review of DOT (1980)

- Criticized uneven coverage and many other aspects of DOT (pp. 9-11)
- Recommended fundamental changes, including:
  - Continuous updating (p. 13)
  - Creation of permanent, professional cadre (p. 14)
  - Outside technical advisory committee (p. 14)
  - Emphasis on cross occupational linkages (p. 15)
  - Alignment with federal job classification systems (p. 15)
- Led to creation of APDOT and O*NET

Source: NRC, *Work, Jobs, and Occupations: A Critical Review of the Dictionary of Occupational Titles*, 1980

Prior NRC Studies

Preliminary review of the SSA research plan for redesign of the disability determination process (1998)

- Concern that O*NET, as being developed, would not meet SSA's needs (p. 24)
- SSA and DOL should enter into an interagency arrangement to create a version of O*NET with information on minimum, as well as average, job requirements (p. 24)

Source: NRC, *The Social Security Administration's Disability Determination Process: A Framework for Research, Second Interim Report,* 1998

Prior NRC Studies

Review of the SSA research plan for redesign of the disability decision process (2002)

- DOL is no longer updating the DOT (p. 9)
- O*NET will not meet SSA's need to define functional capacity to work without major reconstruction (p. 9)
- Barring some resolution, SSA will be left with no objective basis for justifying decisions (p. 9)

Source: IOM, *The Dynamics of Disability: Measuring and Monitoring Disability for Social Security Programs*, 2002

Prior NRC Studies

Study of changes in work and occupational analysis (1999)

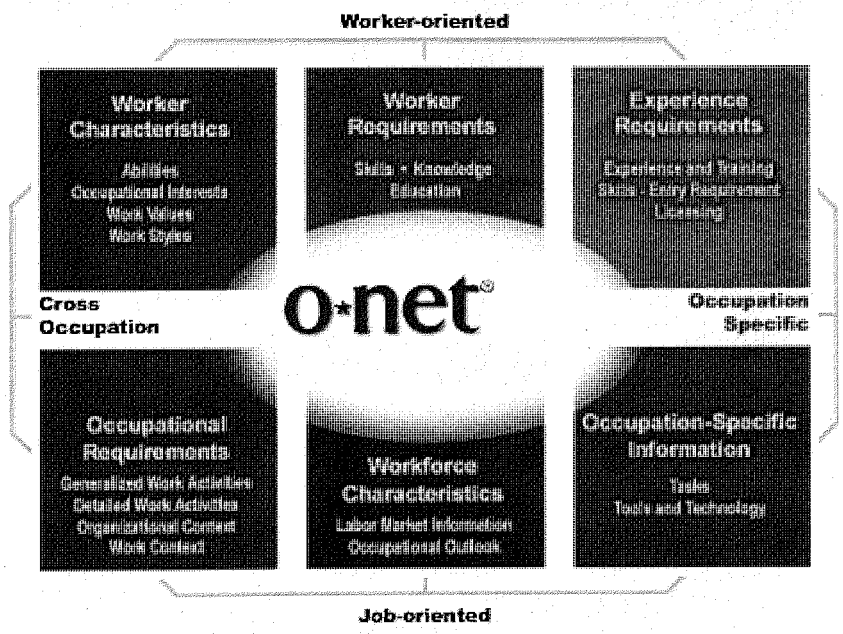
Concluded that O*NET:

- Brings together most comprehensive analytical systems (p. 6)
- Is theoretically informed (p. 6)
- Is fully accessible (p. 6)
- Offers significant improvement over DOT (p. 7)
- Maps to other systems (p. 7).

Source: NRC, *The Changing Nature of Work: Implications for Occupational Analysis*, 1999

O*NET Description

- A very large database
- Accessible online or by download
- Uses a “content model” to describe work


Worker-oriented
Worker Characteristics
Abilities
Occupational Interests
Work Values
Work Styles
Worker Requirements
Skills • Knowledge
Education
Experience Requirements
Experience and Training
Skills - Entry Requirement
Licensing
Cross Occupation
o*net®
Occupation Specific
Occupational Requirements
Generalized Work Activities
Detailed Work Activities
Organizational Context
Work Context
Workforce Characteristics
Labor Market Information
Occupational Outlook
Occupation-Specific Information
Tasks
Tools and Technology
Job-oriented

Who Uses O*NET?

1. Online Career Guidance Systems-
   ~37 million users in 2009
2. State workforce development experts—for job counseling
3. Human resource managers
4. Researchers
5. Vocational rehabilitation counselors

Chapter 8

- SSA uses DOT for disability adjudication
- O*NET is the successor to DOT
- Could O*NET be used by SSA?
- Compare SSA RFC approach with O*NET descriptors

O*NET Descriptors

- Abilities Domain
  - -Cognitive abilities
  - -Psychomotor abilities
  - -Physical abilities
  - -Sensory abilities
- Work Context Domain

THE NATIONAL ACADEMIES

RFC/O*NET Comparison Physical Abilities

- RFC: Perform specific physical tasks, e.g., lift 20 pounds with the hands and arms
- O*NET Abilities: Less specific measures

THE NATIONAL ACADEMIES

O*NET Abilities: Static Strength

32. Static Strength	The ability to exert maximum muscle force to lift, push, pull, or carry objects.

A. How important is STATIC STRENGTH to the performance of *your current job*?

Not Important*	Somewhat Important	Important	Very Important	Extremely Important
1	2	3	4	5

* If you marked Not Important, skip LEVEL below and go on to the next activity.

B. What level of STATIC STRENGTH is needed to perform *your current job*?

Push an empty shopping cart		Pull a 40-pound sack of fertilizer across the lawn		Lift 75-pound bags of cement onto a truck		
1	2	3	4	5	6	7

Highest Level

RFC/O*NET Comparison

- RFC: Lifting, standing, sitting, pushing; postural limitations on balancing, crouching, crawling
- O*NET Work Context: Time spent sitting, standing, climbing, walking, etc.
- Anchors differ: RFC specific time ranges vs. O*NET relative time

O*NET Work Context Descriptors

34. How much time in *your current job* do you spend <u>sitting</u>?

Never	Less than half the time	About half the time	More than half the time	Continually or almost continually
1	2	3	4	5

35. How much time in *your current job* do you spend <u>standing</u>?

Never	Less than half the time	About half the time	More than half the time	Continually or almost continually
1	2	3	4	5

36. How much time in *your current job* do you spend <u>climbing ladders, scaffolds, poles, etc.</u>?

Never	Less than half the time	About half the time	More than half the time	Continually or almost continually
1	2	3	4	5

O*NET Work Context Descriptors

37. How much time in *your current job* do you spend <u>walking or running</u>?

Never	Less than half the time	About half the time	More than half the time	Continually or almost continually
1	2	3	4	5

38. How much time in *your current job* do you spend <u>kneeling, crouching, stooping, or crawling</u>?

Never	Less than half the time	About half the time	More than half the time	Continually or almost continually
1	2	3	4	5

39. How much time in *your current job* do you spend <u>keeping or regaining your balance</u>?

Never	Less than half the time	About half the time	More than half the time	Continually or almost continually
1	2	3	4	5

RFC/O*NET Comparison

Environmental Conditions

- RFC: Ability to withstand environmental hazards such as heat, cold, wetness, vibration, etc.
- O*NET Work Context: Exposure to heat, cold, contaminants, vibration
- Anchors differ: RFC “unlimited” to “avoid all exposure” vs. O*NET “never” to “every day.”

O*NET Work Context Descriptors:

23. In *your current job*, how often are you exposed to very hot (above 90° F) or very cold (under 32° F) temperatures?

Never	Once a year or more but not every month	Once a month or more but not every week	Once a week or more but not every day	Every day
1	2	3	4	5

25. In *your current job*, how often are you exposed to contaminants (such as pollutants, gases, dust, or odors)?

Never	Once a year or more but not every month	Once a month or more but not every week	Once a week or more but not every day	Every day
1	2	3	4	5

27. In *your current job*, how often are you exposed to whole body vibration (like operating a jackhammer or earth moving equipment)?

Never	Once a year or more but not every month	Once a month or more but not every week	Once a week or more but not every day	Every day
1	2	3	4	5

THE NATIONAL ACADEMIES

RFC/O*NET Comparison
Sensory/Perceptual Abilities

RFC	O*NET Abilities
Near acuity	Near vision
Far acuity	Far vision
Color vision	Visual color discrimination
Depth perception	Depth perception

Recommendation

- SSA and DOL should create an interagency task force to study the viability of potential modifications of O*NET to accommodate SSA needs
- Analyze SSA occupational information needs
- Analyze interagency cost-benefit and cost-sharing

Aggregation Issues

- O*NET now includes 1,102 occupations, collects data
  on 965
- SOC 2010 includes 840 occupations
- Since 2006, O*NET has added 153 new occupations-- “breakouts” of SOC occupations and green occupations
- Some O*NET users need these disaggregated data and would welcome further disaggregation
- Other users need aggregated occupational categories aligned with the SOC
- The panel did not agree about the appropriate level of aggregation

Aggregation Issues

- **Recommendation:** Assess benefits and costs of changing the occupational classification system

  Including research into whether and to what extent O*NET occupations represent excessively heterogeneous clusters of jobs for the purpose of disability determination

Data Collection Issues

Conclusion: The O*NET Center uses a multimethod sampling approach, collecting data from different types of respondents who may or may not represent the work performed in that occupation. The impact on measurement error is unclear

Data Collection Issues

- **Conclusion**: The construct validity of the taxonomies of descriptors varies across the content model domains

Improving Database Quality

- **Conclusion**: Over the past decade, DOL has achieved its goal of populating O*NET with updated information, but short-term policy agendas have sometimes reduced focus on core database activities.
- **Recommendation**: Focus resources on core database activities, leaving development of most new applications and tools to others.

Improving Database Quality

- **Recommendation**: Establish and support a technical advisory board to:
  - prioritize research suggestions
  - develop RFPs for high priority research
  - review and rank proposals

Enhancing Service to Users

- **Conclusion**: A lack of effective, ongoing communication between the O*NET center and current and potential users hinders full use of O*NET
- **Recommendation**: Establish and staff an ongoing, external user advisory board

O*NET Lessons Learned

- Developing and maintaining a high-quality database requires expertise and funding
  - -Development cost ???
  - -Data collection costs: $6 m/year to update 100 occupations/year

THE NATIONAL ACADEMIES

- Questions?

We will be happy to respond to your questions.

TAB B

UNITED STATES OF AMERICA
SOCIAL SECURITY ADMINISTRATION

+ + + + +

OCCUPATIONAL INFORMATION DEVELOPMENT
ADVISORY PANEL

+ + + + +

QUARTERLY MEETING
DAY 2

+ + + + +

Thursday
March 25, 2010

+ + + + +

St. Louis, Missouri

+ + + + +

The Quarterly Meeting of the Occupational Information Development Advisory Panel convened at 8:30 a.m., pursuant to notice, in the Colonnade Ballroom, 13th Floor, Sheraton St. Louis City Center, 400 South 14th Street, St. Louis, Missouri, Mary Barros-Bailey, Chair, presiding.

PANEL MEMBERS PRESENT:

MARY BARROS-BAILEY, Chair, Ph.D.
ROBERT T. FRASER, Ph.D.
SHANAN GWALTNEY GIBSON, Ph.D.
THOMAS A. HARDY, J.D.
H. ALLAN HUNT, Ph.D.
SYLVIA E. KARMAN
DEBORAH E. LECHNER
DAVID J. SCHRETLEN, Ph.D.
NANCY G. SHOR, J.D.
MARK A. WILSON, Ph.D.

ALSO PRESENT:

DEBRA TIDWELL-PETERS, Designated Federal Official
MARGARET HILTON, The National Academy of Sciences
THOMAS J. PLEWES, The National Academy of Sciences
DEBBIE HARKIN, Staff
MICHAEL DUNN, Staff
ELIZABETH KENNEDY, Staff
SHIRLEEN ROTH, Staff

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-- Thomas J. Plewes	22
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Adjourn	

1 P-R-O-C-E-E-D-I-N-G-S

2 (8:39 a.m.)

3 MS. TIDWELL-PETERS: Good morning,
4 everyone. If you could please take your
5 seats, we are about to begin.
6 I am Debra Tidwell-Peters, the
7 Designated Federal Officer for the
8 Occupational Information Development Advisory
9 Panel, and we welcome you this morning to our
10 second meeting of 2010.
11 I am going to now turn the meeting
12 over to the Panel Chair, Dr. Mary Barros-
13 Bailey. Mary?
14 CHAIR BARROS-BAILEY: Thank you,
15 Debra.
16 Good morning. I want to welcome
17 back those who were in attendance with us
18 yesterday at the start of our second quarterly
19 meeting in 2010, and also welcome those who
20 are with us for the first time this morning,
21 whether it be in person or telephonically.
22 This is just a reminder that this

1 meeting is being recorded.

2 For those listening in remotely, to

3 follow our agenda please go to our website,

4 www.ssa.gov/oidap for a copy of the agenda.

5 As I indicated yesterday, for those

6 attending our meeting for the first time who

7 might be interested in the activities and

8 deliberations of past meetings, if you go to

9 the meeting page on our website you can click

10 on any agenda, and associated with that agenda

11 are the PowerPoints that were delivered for --

12 or to the OIDAP since our inaugural meeting in

13 February of 2009.

14 On our website you will find a

15 variety of materials, including technical

16 papers and the first report issued by the

17 panel in September of 2009 called "The Content

18 Model and Classification Recommendations for

19 the Social Security Administration,

20 Occupational Information System." The

21 Occupational Information System is also what

22 we call the OIS.

1 It outlines our advice to SSA
2 regarding the data elements we felt essential
3 to include in the content model specific to
4 disability adjudication.
5 As we indicate at the start of each
6 meeting, the charter of the Occupational
7 Information Development Advisory Panel, OIDAP,
8 is to provide Social Security with independent
9 advice and recommendations as to the
10 development of an OIS to replace the
11 Dictionary of Occupational Titles in the
12 disability determination process.
13 To reiterate something I said
14 yesterday, our task is not to develop the OIS.
15 As our name implies, we are advisory in our
16 capacity.
17 Yesterday during her report to the
18 User Needs and Relations Subcommittee, Nancy
19 Shor encouraged public feedback and comment
20 upon the September report. I want to
21 emphasize what she said -- that we welcome
22 input from stakeholders and the public at any

1 point along this process.

2 To help streamline input into the

3 September report, we are strongly encouraging

4 feedback through May 21st of this year.

5 Besides having the report available at our

6 website, disseminating it for feedback through

7 notices along with our meetings in the Federal

8 Register since November, notifying individuals

9 subscribed through our electronic mailing list

10 about it, and the public feedback request, and

11 speaking about it at four conferences, with

12 presentations slated at eight more conferences

13 between now and May 21st, we are attempting to

14 get the word out about the report, as well as

15 potentially including it in other means, such

16 as the Open Government website and/or

17 independently through the Federal Register.

18 What stakeholders say matters, and

19 we want you to know that what you have to say

20 we want to hear.

21 Following our review of our

22 September report, Commissioner Astrue further

1 requested our assistance in providing SSA with
2 recommendations, and we reviewed those
3 yesterday. I will reiterate them this morning
4 for those who weren't in attendance with us
5 yesterday.
6 In January, he asked us to provide
7 SSA with advice in four areas -- in developing
8 a sampling and data collection plan for the
9 research and development process. Number two,
10 for helping with advice and recommendations
11 for the creation of a process for recruiting
12 field job analysts, including methods for
13 certification criteria and training. Three,
14 establishing associations between human
15 functions and the requirements of work that
16 would serve the disability evaluation process.
17 And, four, reviewing relevant documents or
18 reports SSA identifies that may affect or
19 inform SSA's work on the OIS.
20 In our agenda for today, we
21 specifically address the fourth request by
22 Commissioner Astrue.

1 As identified in the September
2 report, the data elements recommended to SSA
3 were the starting point of our process, not
4 the finish line for the OIDAP. While many
5 panels are assembled to study a topic for a
6 designated time, and that culminates with a
7 report, after which time the panel is
8 disbanded, our panel is different in that we
9 have been asked for further independent advice
10 and recommendations into the research and
11 development process of the OIS development.
12 The 2009 National Academies of
13 Science report on the O*NET is the first time
14 that an independent group has reviewed an
15 occupational information system in 30 years,
16 since a review of the Dictionary of
17 Occupational Titles was conducted by the
18 National Research Council in 1980, and what is
19 often referred to as the Miller Study.
20 We commend the U.S. Department of
21 Labor for commissioning the National Academies
22 of Science Panel to independently review the

1 O*NET upon the O*NET's tenth anniversary.
2 This is an important process.
3 It is timely that the National
4 Academies of Science reviewed an existing
5 civilian occupational information system while
6 we are providing advice and recommendations to
7 the Social Security Administration on the
8 development of an OIS. The existence of the
9 National Academies of Science panel in its
10 report provides us with the opportunity to
11 explore areas that exist in the development of
12 any occupational information system, and learn
13 from that process to better advice and
14 recommendations to the Social Security
15 Administration.
16 The National Academy of Science
17 report provides us as a panel with a great
18 chance for learning. That is the goal for
19 this morning.
20 We thank Margaret Hilton, the Study
21 Director and Senior Program Officer, and Tom
22 Plewes, Associate Study Director and Senior

1 Program Officer with the National Academies of
2 Science for accepting our invitation this
3 morning to come and speak to us.
4 Behind Tab 3 in our three-ring
5 binders we will find the biographical sketches
6 for Margaret and Tom, and we will also find
7 copies of their PowerPoint presentations.
8 Margaret and Tom have quite a bit
9 of information to present to us this morning.
10 I will ask the panel to withhold questions
11 until after they are completed with their
12 presentation.
13 Welcome.
14 MS. HILTON: Thank you. That's it.
15 The name of our study, which is available
16 right now on our -- the National Academy Press
17 website -- is called "A Database for a
18 Changing Economy: Review of the O*NET."
19 The Department of Labor asked us to
20 do this study. As Mary mentioned, it seemed
21 like a good time to study O*NET, because it
22 was about a decade old. And they especially

1 wanted us to document how O*NET is used, but
2 they also wanted us to evaluate those uses.
3 And they are especially interested in use in
4 workforce development, because O*NET was
5 originally created for that purpose by state
6 and local employment offices.
7 They were interested in human
8 resource management uses of O*NET, and
9 especially in business and in job matching
10 systems. And they were interested in how
11 O*NET links to other occupational
12 classification systems, in particular the
13 Federal Government's standard occupational
14 classification system.
15 The linkages are important, because
16 it is a database. It is an electronic
17 database, and it is sometimes used going back
18 to the HRM and HRM information systems, HRM/IS
19 systems.
20 They wanted us not only to document
21 how O*NET is used and evaluate it, but also to
22 identify how O*NET could be improved, and they

1 were especially interested in the areas you
2 see listed on the slide. Currency, how up to
3 date is this information? Efficiency, are
4 there better ways to collect the data? Cost
5 effectiveness, is there any way to do it less
6 expensively? And they wondered about using
7 new technologies to collect the data.
8 We just had breakfast with Mary and
9 Sylvia and Mark. We were talking a little bit
10 about the panel selection, and you will see a
11 gold brochure at your place that talks in
12 greater depth about our whole National Academy
13 study process.
14 Basically, Tom did most of the
15 recruiting, and I think he did a great job.
16 Tom talked to the members of the Committee on
17 National Statistics. That's a standing
18 committee of the National Academies. And he
19 also just talked to people in the field.
20 And when we talk to people, they
21 identify other people, so it's a complex kind
22 of a snowball sampling process we go through,

1 and we talked to many people and we have
2 finally come up with a slate of nominees.
3 They are only nominated. Our proposed slate
4 of staff people goes all the way up to the
5 President of the National Academy of Sciences.
6 Only Ralph Cicerone, the President,
7 can approve their membership, and yet even his
8 approve is provisional, because those names,
9 those nominees' names are then posted for
10 public comment for 20 days. And at the first
11 committee meeting we always hold a closed bias
12 and conflict discussion, and based on that
13 discussion some members may decide to
14 voluntarily drop off or there may be other
15 problems.
16 After the bias and conflict
17 discussion, we write a memo that goes to our
18 lawyers, and then, finally, when the lawyers
19 say it is okay, then they become the final
20 committee members. So it's a complex process,
21 but we try to -- we do it that way to try to
22 make sure we get the best panel members.

1 We also are trying to balance areas
2 of expertise, and on our panel we have -- we
3 had quite a few IO psychologists, people in
4 the field of work analysis, but we also wanted
5 users of O*NET. We also tried to get a mix of
6 views of O*NET, so that we weren't having only
7 the people that were involved in the original
8 development or the people that are known to be
9 its biggest proponents, but we also tried to
10 include people who had more questions about
11 the system.
12 So these are the panel members we
13 ended up with. I am not going to read through
14 all their names, but obviously they are people
15 known in the field of IO psychology and users
16 and statisticians.
17 Our study process is that we were
18 reviewing the literature throughout the study
19 process and, of course, our panel members
20 helped us, because some of them know the
21 literature quite extensively. We did hold
22 public workshops in both March and April, and

1 Sylvia Karman spoke at our March workshop.
2 The National Academy has a special
3 exemption from the Federal Advisory Committee
4 Act that allows us to hold some of our
5 deliberations in closed session, and we did
6 hold such deliberations. We created a review
7 draft, based on all of the information we had
8 received that entered our review process in
9 August.
10 Then, we did what's called a
11 response to review, where we talk about every
12 comment we received from the outside
13 reviewers, how we plan to address that
14 comment, and, if we don't plan to address it,
15 we have to have a very good reason not to make
16 the change.
17 Our response to review was accepted
18 in November. One thing I should mention is
19 that all of our panel members and all of the
20 outside reviewers are volunteers, so I was
21 just going to mention the name of our
22 volunteer review coordinator. That was Neal

1 Schmitt from Michigan State University. He
2 approved our response to the review comments
3 in November, and we transmitted our report to
4 DOL in November, in pre-publication form.
5 And if you are interested in
6 reading the whole report, you can see the web
7 address right there. It is still published
8 right now in pre-publication form. Right now
9 there is final editing going on to the second
10 page proofs, and on April 22nd we expect to
11 actually receive the books, the published
12 books, from the National Academy Press.
13 At the time that we get the final
14 copies of the book, the website version will
15 also change and reflect the changes that are
16 in the final printed report.
17 We have done other studies that are
18 related to our recent O*NET study, and Mary
19 mentioned our important study in 1980 when we
20 reviewed the Dictionary of Occupational
21 Titles. And that committee found a lot of
22 flaws in DOT -- uneven coverage. There were a

1 lot more job titles listed in the DOT from
2 manufacturing than existed in the economy,
3 because even in 1980 the economy was already
4 beginning its shift, which continues away from
5 manufacturing towards services.
6 That panel recommended a lot of
7 very fundamental changes in the Dictionary of
8 Occupational Titles. One that is actually not
9 listed on my slide was the idea of going to an
10 electronic database, because it is just going
11 to inherently be out of date if you are going
12 to create a big paper dictionary, and then
13 have to update it and print it.
14 So the vision was to have much more
15 continuous updating and to have some permanent
16 professional people within the Department of
17 Labor who could oversee the development of a
18 better and improved database for the future.
19 The panel also recommended an
20 outside Technical Advisory Committee, and the
21 only reason I mentioned that recommendation
22 from a study way back in 1980 is that our

1 panel that met just last year makes the same
2 recommendation to the Labor Department, that
3 they should have an outside Technical Advisory
4 Committee.
5 1980 was a time when a lot of jobs
6 were being lost, manufacturing was shrinking,
7 people were being laid off, and so that
8 committee recommended looking at jobs,
9 defining them broadly and looking at what can
10 be -- what kinds of skills, abilities, and
11 other characteristics can transfer from one
12 job to another?
13 So they talked about cross-
14 occupational linkages. That panel recommended
15 that the new system be more in line with other
16 federal occupational classification systems,
17 and that study was important, because it led
18 the Labor Department to create the Advisory
19 Panel on the Dictionary of Occupational
20 Titles. And that panel led to the creation of
21 O*NET.
22 Another earlier study that relates

1 more directly to your charge was a preliminary
2 review of a research plan to redesign
3 disability determination. That study
4 expressed a concern that O*NET, as it was
5 being developed at that time, was not going to
6 meet SSA's needs. That panel suggested that
7 SSA and DOL enter into an interagency
8 agreement to create a version of O*NET with
9 information on minimum as well as average job
10 requirements.
11 Another study, which Tom brought a
12 copy of, so I can show it to you, is called
13 "The Dynamics of Disability." And this one
14 came out in 2002. It is related to the study
15 I just mentioned to you, in that it is a more
16 final study of the same SSA research plan.
17 Basically, they observed, which we
18 all know, is that the Labor Department was no
19 longer updating the DOT, that the O*NET would
20 not meet the SSA's needs to define residual
21 functional capacity to work, without major
22 reconstruction. And that if there wasn't any

1 resolution to this problem that SSA would be
2 left with no objective basis for justifying
3 the decisions.
4 Now, another study that is -- we
5 are getting a little more -- a little more
6 recent, still 10 years old, the time flies.
7 This book is called "The Changing Nature of
8 Work: Implications for Occupational
9 Analysis." This study was actually done for
10 the Department of Defense, which was looking
11 at a lot of different occupational information
12 classification systems.
13 This panel concluded that O*NET
14 brings together the most comprehensive
15 analytical systems. It is theoretically
16 informed. It is fully accessible and offers
17 significant improvements over the DOT, and it
18 maps well with other systems. So this panel
19 was basically encouraging DoD to consider
20 O*NET as a framework as it tries to bring its
21 occupational systems closer together.
22 And now I'm going to turn it over

1 to Tom to tell you more about O*NET.

2 MR. PLEWES: Thank you. And let me

3 just say that more recently there was a Rand

4 panel that took a look at the DOT -- that took

5 a look at the possible use of the O*NET and

6 other classification systems for DoD purposes,

7 and recommended that DoD take a look at O*NET.

8 So that work keeps on going on. I know about

9 that, because I happened to be lucky enough to

10 serve on that panel.

11 Let's see here. Here we go, okay.

12 So what is O*NET? I really don't have to

13 tell this group that, but let me just start

14 out with some very basics here. It is a very

15 large database. It is probably not as big as

16 some people would like, but it is a lot bigger

17 than a lot of users would like to see when

18 they open up those files.

19 It is accessible online or by

20 download, and it uses this thing called a

21 content model to describe work. Pretty basic

22 stuff, but I just want to kind of start out

1 this way, because I think it's important that
2 we understand that.
3 There is a rigor to what O*NET --
4 how O*NET approaches it. The folks who
5 developed O*NET took a look at all of the
6 literature at that time, and came up with, if
7 you will, this quadrant, taking a look at not
8 only work-oriented but job-oriented kind of
9 characteristics of work that wanted -- they
10 wanted to have incorporated.
11 We will get into the evaluation in
12 just a minute here.
13 The important thing I think that we
14 need to understand is that O*NET is a general
15 purpose kind of a classification system. It
16 has a wide variety of users and uses, and we
17 drilled into some of these in the report that
18 we published. Some of the data that we were
19 able to assemble, that really wasn't well-
20 known before, was quite astounding as a matter
21 of fact.
22 For example, over 37 million

1 individual users did some access to an online
2 career guidance system, which is in turn
3 driven by O*NET in 2009. That was a very
4 large number, and it caused some people to
5 think, gee whiz, maybe if we just owned O*NET
6 we would really be rich.
7 But the fact of the matter is is
8 that there are a lot of folks out there who
9 use it for career guidance and have built it
10 into these career guidance systems -- state
11 workforce development, for job counseling and
12 the more traditional roles that O*NET and the
13 DOT and O*NET itself were originally designed
14 for.
15 They had two experts, as you know,
16 from state labor market information
17 organizations that helped provide this
18 information to those folks who are trying to
19 match workers with jobs out in the field,
20 human resource managers, researchers, and
21 then, importantly, vocational rehabilitation
22 counselors, who are of course represented by

1 your Chair and other members of this panel.
2 Those are the folks who use O*NET.
3 In fact, I think that if someone asked me
4 that question, who uses O*NET, I would say
5 you. You may not know it, but in some way
6 this structure called O*NET fits into many of
7 the things that you do on a daily basis, and
8 in a wide variety of areas.
9 The important thing is is that --
10 to understand is that it is designed to meet a
11 wide variety of uses, but in each case there
12 probably is a better system that could be
13 developed for that particular use. But it is
14 a general purpose system, and it does not try
15 to fulfill all of the needs of all of the
16 users, but it tries to, if you will, provide a
17 basis for all users to understand and to view
18 an occupational information system.
19 So what did we say here? First of
20 all, why did we get into this SSA business?
21 People have asked that question. Why did the
22 panel choose to look at this? If you look at

1 the original charge that the panel came up
2 with, it does not specifically say, "Now, you
3 take a look at whether or not O*NET meets the
4 disability -- you know, the requirements of
5 SSA for the disability adjudication work that
6 they do." It just wasn't there.
7 But as the panel began to look at
8 the major uses and the previous studies that
9 were done by the National Research Council and
10 the Institute of Medicine, it became very
11 obvious that a major interface between O*NET
12 and a user system was represented by the need
13 that you are looking at now, the Social
14 Security Administration's need.
15 They didn't feel that they could --
16 that they could put out a report without at
17 least addressing that interface, and so you
18 saw Chapter 8 in our report.
19 We did not have on the panel a
20 person who was an expert in Social Security
21 Administration disability adjudication, and we
22 did not look at all of the issues that your

1 panel is looking at, nor in the depth of
2 hands-on experience that you are taking.
3 So Chapter 8 has to be looked at in
4 a slightly different view than the work that
5 you are doing, it seems to us. And that view
6 is, if you are developing a general purpose
7 occupational information network system, here
8 is a major user, and are there opportunities
9 to serve the needs of this particular user,
10 given what we understand to be the needs of
11 the user and the functionality that O*NET
12 provides. So we need to make that very clear.
13 Now, the panel was not you, and it
14 did not bring the same expertise to bear on
15 the issue. But I was pleased to note from the
16 report that you put out in January that they
17 faced and they approached the issues in many
18 of the same ways that you have approached the
19 issues -- by taking a look, if you will, at
20 the ability of O*NET to fulfill some of those
21 particular functions.
22 So they actually said, okay, could

1 O*NET be used by the Social Security
2 Administration for this? Well, what you need
3 to do, if you are going to make that kind of
4 decision, is that you need to take a look at
5 your residual functional capacity approach,
6 and you need to take a look at the O*NET
7 descriptors, and so let's do that
8 systematically.
9 You've done a lot of that work here
10 in your report, and I will not spend a lot of
11 time at it. But I do want to let you know
12 what the panel came up with.
13 First of all, here are the O*NET
14 descriptors. They are a mix of the cognitive,
15 psychomotor, physical abilities, sensory
16 abilities, a mix of the traditional, if you
17 will, occupational classification, with some
18 of the work in fact taken directly from
19 Fleishman's work on the physical ability side.
20 But it covers a wide range of
21 domains, and it doesn't focus on the
22 domains of absolute most interest to you.

1 Okay? It is, again, a general purpose. And
2 there is, of course, the work context domain,
3 which we won't spend too much time on.
4 So we took a look at comparing, as
5 best the panel could, the residual functional
6 capacity with O*NET comparisons. And the
7 first thing they looked at was physical
8 abilities. We took as a given the residual
9 functional capacity requirements that have
10 come up with -- that the Social Security
11 Administration has come up with.
12 And it was very obvious that when
13 taking a look at physical abilities that O*NET
14 has much less specific -- specificity in the
15 measures. There is not the kind of
16 specificity that is necessary to meet the
17 current RFCs for physical disabilities. And,
18 interestingly enough, that is exactly what
19 your report found as well.
20 And this is just an example. The
21 same example is in your report. I won't dwell
22 on this. It's in our presentation.

1 In terms of comparing the RFCs for
2 lifting, standing, sitting, pushing, you can
3 read all those. Again, there are specific
4 time ranges versus a relative time used in
5 O*NET. The anchors are very different, and it
6 causes,if you will, a not direct
7 transferability of the O*NET work context to
8 meet. It is the RFCs of Social Security, and
9 here are some of the examples in O*NET, and
10 you can see that. We'll just go through this
11 very quickly.
12 In terms of environmental
13 conditions, the RFCs are quite specific in
14 terms of ability to withstand environmental
15 hazards. There is -- the O*NET work context
16 has exposure to heat, contaminants, vibration,
17 and so forth.
18 I would call this -- you may not
19 agree with me -- I would call some of these
20 differences between O*NET and the RFCs used by
21 Social Security to be marginal. They aren't
22 critical to say O*NET will never ever meet

1 that, but it is a matter of your judgment.
2 And I think you should -- you need to take a
3 look at that, and here are the O*NET anchors
4 there.
5 In terms of sensory perception and
6 abilities, we have just gone through again
7 near acuity, near vision, far acuity, far
8 vision. Is that nuance, or is that terribly
9 important? If you are sitting in the field
10 and you've got to make a judgment, perhaps it
11 is terribly important, and you need to have
12 something much more specific or different than
13 O*NET is offering you.
14 And so what did we come up with?
15 What did the panel come up with? I think that
16 there was -- there is a general concurrence on
17 the panel with the findings of the previous
18 National Research Council reports that O*NET,
19 in and of itself, cannot be used in the way it
20 is for the purpose that you need to use it.
21 It just -- it is not -- it is not fully
22 capable of serving that purpose.

1 However, there are those good
2 things we talked about in terms of O*NET --
3 its tie-in with other classification systems,
4 particularly with the standard occupational
5 classification structure, the rigor that is
6 used in building O*NET.
7 Some of that rigor is based on
8 surveys of workers in establishments that may
9 have some issues with response rates, and so
10 forth, and we looked at that also. And, yes,
11 we recommended some revisions in the way that
12 those surveys are done.
13 Some of that has to do with the way
14 in which experts, job analysts, provide their
15 input to this. And, again, there has to be a
16 reconsideration of some of -- the way in which
17 that particular business is done, and we --
18 the panel made recommendations in that as
19 well.
20 But I think that they saw enough
21 goodness in O*NET that they recommended that
22 the Social Security Administration and the DOL

1 create an interagency task force to study the
2 viability of modifications of O*NET to
3 accommodate the needs of the Social Security
4 Administration.
5 It didn't say, "Social Security
6 Administration, change the way you do business
7 to meet O*NET." There are some things that
8 could be changed within O*NET, for example,
9 that would help make that system much more
10 reflective of -- or much more consistent with
11 where the Social Security Administration wants
12 to go with disability adjudication.
13 It asks that there be an assessment
14 of SSA occupational information needs.
15 Whoops, we didn't recommend your panel, but
16 that's certainly a contribution that we
17 believe that you are making. And then,
18 analyze interagency cost-benefit and cost-
19 sharing.
20 These things don't come without
21 cost, both to DOL in terms of the kind of work
22 that must be done to make O*NET somewhat more

1 friendly to this particular use, nor certainly
2 to the Social Security Administration as it
3 would try to work with Department of Labor to
4 make O*NET much more friendly to the
5 disability adjudication and the disability
6 adjudication system -- information system much
7 more friendly to O*NET.
8 So there is a cost-benefit that has
9 to be made. We did not make that cost-
10 benefit. The panel did not -- didn't have the
11 time, the input, but we recognized -- the
12 panel recognized that you don't make these
13 decisions based on what is nice to have. You
14 make the decisions based on what is practical,
15 what is affordable, and what is consistent
16 with the ultimate need of the user. And I
17 think that was the recommendation.
18 So a lot of the work that was
19 suggested by the panel has been handed back to
20 the Department of Labor, and not just to
21 Social Security Administration. So, and we
22 are still waiting to hear what Department of

1 Labor's response to that particular
2 recommendation is.
3 MS. HILTON: Thanks, Tom. That was
4 a very good explanation of where the panel is
5 and what we recommended.
6 When Debra Tidwell-Peters invited
7 us to speak, she mentioned some specific
8 issues that she would like us to address,
9 because our report is very broad, so I just
10 wanted to try to address some of the specific
11 questions she asked about.
12 One is the aggregation issue, which
13 I know you all are very familiar with. I
14 mean, obviously, DOT had 14,000 jobs. Right
15 now, O*NET has 1,100 occupations, so that's --
16 it's a huge difference.
17 The O*NET is aligned with SOC. It
18 does have a coding system with digits, so that
19 you can relate any O*NET job to an SOC job.
20 Nevertheless, it is not perfectly aligned.
21 The SOC has just revised. It has 840.
22 Obviously, O*NET has over 1,000.

1 Since 2006, O*NET has added 153 new
2 occupations. These are what they call
3 breakouts of SOC occupations. In other words,
4 it is becoming more disaggregated. Part of
5 the breakouts are related to the search for
6 green occupations.
7 What our panel observed is that for
8 some of the users of O*NET they really want
9 this disaggregated data. People in career
10 guidance want to be able to direct young
11 people towards a more specific job, not
12 towards such a broad occupation.
13 Obviously, your users would like
14 more disaggregated data. On the other hand,
15 there are other users, and specifically in
16 workforce development. And that is the core
17 constituency that is why, first, DOT was
18 created, and then O*NET was created.
19 It was to serve state workforce
20 development people who are trying to place
21 people in jobs. And they like the broader
22 occupations, because they are completely

1 aligned with SOC occupational codes and they
2 can then link this occupation with a lot of
3 data collected by the Bureau of Labor
4 Statistics and state and local agencies, and
5 that is all collected at the SOC level.
6 So the panel observed these -- some
7 people want more disaggregation, some people
8 want less disaggregation, and the panel didn't
9 agree. I think that shows that our panel was
10 well balanced. I mean, you could say it's a
11 problem that they can't agree, but it just may
12 reflect the reality.
13 The panel -- although the panel
14 didn't agree what the level of aggregation
15 should be, again, just as in the case that Tom
16 just mentioned, our panel met for a certain
17 amount of time and then it quit -- that was
18 the end of our time, money, and effort, and so
19 the panel felt very, very strongly that this
20 aggregation issue was critical for the future
21 of O*NET and for the usefulness of O*NET.
22 And so they recommended that the

1 Labor Department either conduct or commission
2 research to look at the costs and benefits of
3 changing it, of either making it bigger or
4 making it smaller, and, you know, what would
5 be the result of making it bigger, what are
6 the pros and cons, what are the results of
7 staying smaller, closer to SOC, what are the
8 pros and cons.
9 One element of our recommendation
10 on this aggregation issue, and it's a long
11 recommendation -- we had many long
12 recommendations. So one element was
13 specifically calling for some research into
14 whether O*NET is too disaggregated for the
15 purposes of disability determination, and to
16 what extent.
17 There is the recommendation. Sorry
18 I didn't put it up there, but it seems -- I
19 know you have this all right in front of you
20 anyway, so -- okay.
21 Data collection -- now that was
22 another issue, and Tom just started to mention

1 it briefly. Right now, O*NET is using --
2 collecting data using a lot of different
3 methods and a lot of different sources. It is
4 collecting data from many different types of
5 respondents, including job incumbents.
6 Then, there are people they call
7 occupational experts, people who may have
8 worked in the occupation at one time, but now
9 they might be trainers or doing something else
10 related. That is another group. And then,
11 the third group are the occupational analysts.
12 Our conclusion was that these --
13 all these different sources may or may not be
14 the best representative of the work that is
15 performed, and that the impact on measurement
16 error is unclear, because with every method
17 you introduce new error.
18 Specifically on the issue of the
19 use of occupational analysts, here again this
20 was an issue where our panel did not entirely
21 agree, and all you have to do is read Chapter
22 2. You can tell it. But you can especially

1 tell it because there is a dissent at the end
2 of our report, where two of our panel members
3 dissented on about a few issues, but they were
4 -- one of the issues was this use of
5 occupational analysts where they felt that
6 giving paper descriptions of an occupation to
7 a trained occupational analyst would not
8 result in an accurate rating.
9 Another data collection issue that
10 we identified was that the construct validity
11 of the taxonomies of descriptors varies across
12 the different domains of the content model.
13 Tom showed you a picture of the content model.
14 It is very, very big. There are many
15 domains. Within the domains, there are many
16 specific descriptors. And some of those
17 descriptors have a strong research base.
18 Tom mentioned the abilities
19 descriptors. They are drawn from Fleishman.
20 They are widely accepted as some of the best
21 descriptors of abilities, with the strongest
22 research base. Some of the other taxonomies,

1 skills, and knowledges there is less support
2 in the research.
3 So to the database quality, another
4 conclusion was that DOL has achieved its goal
5 of populating the O*NET with updated
6 information over about a decade. We did see a
7 problem that there were some short-term policy
8 agendas that were sometimes reducing the focus
9 on the core database activities.
10 And to mention some specific
11 concerns there, the Labor Department and the
12 O*NET center, trying to make it more user-
13 friendly, put a lot of things onto O*NET
14 Online, which some of the users in the field
15 don't entirely agree with, especially trying
16 to define an in-demand occupation, define it
17 nationally, and yet we had state people
18 speaking at some of our workshops saying they
19 did not like it that O*NET Online puts little
20 flags and highlights certain occupations to
21 suggest that, you know, these are growth
22 areas, this is where you can place people in

1 jobs, and so forth, and especially now with
2 the recession.
3 So basically that is an example of
4 a short-term policy agenda, and certainly the
5 current focus on the green jobs, where they
6 are adding a lot of green jobs, but how
7 representative are those jobs of the whole
8 economy.
9 So our recommendation here was that
10 DOL should be focusing its resources on the
11 core database activities, and not getting so
12 involved in developing the applications and
13 tools and trying to become more user-friendly.
14 Related to that, as Tom mentioned,
15 many people just take the whole O*NET database
16 and they make it more user-friendly anyway,
17 especially these online career guidance
18 systems. So Labor Department doesn't need to
19 spend its own time and money creating these
20 applications.
21 Our most important recommendation
22 for improving the quality of the O*NET

1 database was that we strongly believe that the
2 Labor Department should establish and support
3 a Technical Advisory Board. That advisory
4 board we think should be prioritizing research
5 suggestions that come from the field or from
6 within DOL. They should develop RFPs for the
7 high priority research items, and then they
8 should review and rank proposals from outside
9 researchers to conduct that research.
10 As I mentioned, we have many
11 recommendations in our report. We have a lot
12 of long recommendations. But since many of
13 our recommendations relate to research, this
14 is our top priority.
15 If you are interested in how we see
16 the priority of all of our many
17 recommendations, I would recommend that you
18 read Chapter 10. In Chapter 10 of our report
19 we rank all of the research and development
20 recommendations.
21 We also noticed there were problems
22 in terms of the users and the communication

1 back and forth between the database developers
2 and the users. We didn't think there was
3 enough ongoing communication. The
4 example I just gave to you of the O*NET center
5 identify nationally in-demand occupations when
6 people at the state level don't even think
7 those are in demand is an example of a lack of
8 communication. So here we recommended that
9 they establish and staff an ongoing External
10 User Advisory Board.
11 When we met not long ago with the
12 SSA Subcommittee of House Ways and Means, they
13 wondered, are there any lessons learned from
14 the development of O*NET that could be
15 applicable as you start to create your own
16 occupational information system? Our main
17 conclusion would be that developing and
18 maintaining a high quality occupational
19 database takes a lot of expertise, and it
20 requires money.
21 We were not able to develop an
22 estimate of how much it costs to create the

1 content model, but that was a very, very
2 extensive research project that went on for
3 five years -- developing it, developing the
4 constructs, the taxonomies -- and then going
5 to the field and pilot testing it.
6 We do know that the data collection
7 costs right now are about $6 million a year,
8 and that updates 100 occupations a year. So
9 that gives you some idea.
10 And one other thing I'll mention
11 related to data collection costs is that
12 whenever O*NET adds more occupations, whenever
13 it becomes less aggregated, more
14 disaggregated, as it has done, that is always
15 going to increase your data collection costs,
16 because you have more occupations to go after,
17 and that means that same money that could have
18 been used to refresh your existing occupations
19 more frequently is going to chase more
20 occupations. So there is always a tradeoff in
21 any kind of database like this.
22 And that's it. Now we're ready to

1 take your questions.

2 CHAIR BARROS-BAILEY: Thank you,

3 Margaret and Tom, for your words and your

4 presentation. I think this is very useful to

5 us this morning.

6 Before I open up questions to the

7 panel, I have some questions I would like to

8 ask. And I know that we have mentioned that

9 Mark and I met with you independently outside

10 of the OIDAP, and Mark outside of his

11 university, me outside of my previous IOTF

12 representation, and we also understand that

13 SSA has met with you as well.

14 So in terms of the version of your

15 report that is online, on the website, in

16 terms of the pre-publication copy, and you

17 mentioned in your slides that you are going to

18 have the final report available in April or

19 May, what are the changes that are in the

20 final copy of the report?

21 MS. HILTON: I can't -- I mean, I

22 just can't give you that answer. We made

1 changes throughout -- well, we made some
2 changes to almost every chapter, as a result
3 of the feedback we got both from DOL, from the
4 O*NET center, and from you.
5 But, you know, without having a
6 copy in front of me, because every change --
7 as I mentioned to you at breakfast, there was
8 a lot of internal discussion, because our
9 policy is that we don't change major
10 conclusions or recommendations. So that I can
11 say, that the major conclusions and
12 recommendations, including the recommendation
13 that Tom shared with you about an interagency
14 task force, have not changed.
15 CHAIR BARROS-BAILEY: How about for
16 Chapter 8? What were the specific input that
17 you received that might have changed anything
18 in Chapter 8?
19 MS. HILTON: We did make some small
20 changes to Chapter 8 in response to our
21 meeting with you and with SSA.
22 CHAIR BARROS-BAILEY: What were

1 those?

2 MS. HILTON: Like I said, I can't

3 -- without having the, you know, copy in front

4 of me where I see the redline strikeout, I

5 can't say.

6 CHAIR BARROS-BAILEY: So were they

7 editorial in nature?

8 MS. HILTON: I would say they are

9 more editorial in nature.

10 CHAIR BARROS-BAILEY: Okay.

11 MS. HILTON: As I mentioned, our

12 policy is not to change major conclusions or

13 recommendations.

14 CHAIR BARROS-BAILEY: Okay. Thank

15 you. And then, in terms of how I came at the

16 report, and as a panel member, what guided my

17 evaluation of the report was our own

18 evaluation of the occupational information

19 needs of SSA. And I know that Tom has a copy

20 of the report, and I know that's outlined in

21 pages 11 and 12 of the report.

22 And so for anybody who is listening

1 in and wants to access a copy, I mentioned at
2 the beginning of the meeting that you can go
3 to our website, the home page, and access the
4 report.
5 The occupational information needs
6 that are outlined in pages 11 and 12 of our
7 report include four categories of what an
8 occupational information system must contain
9 to meet SSA's needs. I would like to ask some
10 questions specific to the recommendation that
11 the National Academies of Science panel has in
12 terms of occupational information needs for
13 SSA in Chapter 8 for disability determination
14 as they relate to these four areas.
15 One of the things -- the very first
16 thing that is -- the bullet says reflect
17 national existence of incidence of work. It
18 says a new occupational resource must show
19 that work exists and that work exists in
20 numbers sufficient to indicate that it is not
21 obscure.
22 One of the things -- the last

1 things that you just mentioned was the
2 inclusion of green jobs and whether, you know,
3 that overemphasis is really reflective of work
4 as it exists in the national economy.
5 So how did the NAS panel consider
6 this occupational information need for SSA in
7 terms of the disability determination process
8 in its recommendations for Chapter 8?
9 MS. HILTON: We didn't specifically
10 address, you know, the specific need of the
11 work identified in numbers, or specific -- we
12 did not identify that question specifically
13 within the context of the need for disability
14 determination, and we didn't even make a
15 specific conclusion or recommendation.
16 But I think it's fair to say that
17 our panel believes that the current
18 occupations that are in O*NET are pretty well
19 representative of the occupations in the
20 national economy. I think it's fair to say
21 also that some -- well, I don't -- we didn't
22 really reach consensus, as I mentioned, about

1 the recent growth and the new occupations that
2 are added, with some panel members feeling
3 like these are being added for political
4 reasons, if they are green jobs, and other
5 panel members saying that it is very important
6 that any occupational system remain up to
7 date. And if jobs are changing, and if new
8 jobs are being created, they should be
9 reflected.
10 So I'm sorry that is not an exact
11 answer to your question.
12 MR. PLEWES: Without directly
13 addressing this point that you make here in
14 terms of reflecting national existence and
15 incidence of work, I think the panel did talk
16 to that, and consider that, in terms of
17 reaffirming the need for the linkage to the
18 standard occupational classification
19 structure.
20 The standard occupational
21 classification structure is that structure
22 which allows you to link to those databases

1 which tell you about the trends in the
2 occupations out in the field, the new and
3 emerging occupations, and so forth. The
4 standard occupational classification structure
5 is updated on a recurring cycle, a regular
6 cycle, so there is a built-in updating
7 mechanism there.
8 So those two aspects of O*NET I
9 think are -- commend themselves to being able
10 to reflect the national existence and
11 incidence of work. Whether they do or not in
12 practical aspect as they are applied, as the
13 O*NET information flows into -- I'm sorry, as
14 SOC information -- based information flows
15 into O*NET, is not something that the panel
16 looked at.
17 CHAIR BARROS-BAILEY: Thank you.
18 And in your presentations I noted that you use
19 the word "occupation" in terms of reflecting
20 the O*NET, and I know that in terms of a
21 decision point that DOL had to make in the
22 development of the O*NET was what was the unit

1 of analysis. And in your report you indicate
2 that to be the unit of analysis at the
3 occupation level.
4 Was there ever a consideration of
5 the unit of analysis or a user need where the
6 unit analysis was at the job level?
7 MS. HILTON: Well, as I mentioned,
8 when the Advisory Panel on the DOT met, one of
9 their concerns was that it was just not
10 practical, not affordable, to continue trying
11 to collect data on 14,000 job titles. I think
12 it is important to remember that even the DOT,
13 even with 14,000, that those job titles were
14 representing more different, unique jobs.
15 If you are going to create a
16 national database, it is not ever going to be
17 possible to define every job, because
18 organizations have their own job titles and it
19 just gets very, very large.
20 I remember Rich Froshel telling me
21 something about when the state of Texas talked
22 to their employers and said, "What job titles

1 do you use here in Texas?" And they got
2 something like 80,000 different job titles
3 back.
4 So I believe that it -- that the
5 reason -- one reason O*NET uses the broad
6 occupations it does is that it was trying to
7 follow the recommendations of that earlier
8 advisory panel, which recommended looking at
9 fewer, broader occupations, partly because, as
10 I mentioned, their concern of identifying the
11 transferable skills and knowledges, and so
12 forth, that people might be able to use to
13 move from job to job.
14 CHAIR BARROS-BAILEY: Thank you.
15 The second area in terms of SSA's needs for
16 occupation information was reflecting work
17 requirements, that it must enable SSA to
18 evaluate an individual's ability to perform
19 work rather than to obtain work. As such, it
20 says any new resource must reflect
21 occupational information that is aggregated,
22 defined, and measured, in a way that allows

1 SSA to compare work requirements to an
2 individual's RFC and to determine the ability
3 to work despite a severe impairment.
4 So the question is: how did the
5 National Academies of Science panel consider
6 this occupational information need for SSA's
7 disability determination process in its
8 recommendations?
9 MR. PLEWES: Again, I think that if
10 you look at Chapter 8, the panel did not go
11 into the level of detail that you are -- have
12 and will go into. Let's say that right up
13 front.
14 So its comparisons that I discussed
15 with you between the RFC and the O*NET are at
16 a fairly high level of aggregation. That
17 said, when you go into the various
18 descriptors, you can see that in some cases
19 O*NET does a pretty good job, and in some
20 cases it falls way short of the mark as to
21 meeting this particular requirement in terms
22 of reflecting work requirements, as you have

1 defined them as necessary to conduct -- to, if
2 you will to clearly understand the RFCs. So
3 it varies.
4 CHAIR BARROS-BAILEY: Thank you.
5 And you mentioned in the chapter the RFC,
6 which is the physical. I didn't see a mention
7 of the MRFC, which is the mental/cognitive.
8 Was that something that the National Academies
9 of Science panel considered in its
10 recommendations for Chapter 8?
11 MR. PLEWES: Not in any depth, no.
12 MS. HILTON: No.
13 MR. PLEWES: There was a mention,
14 and that's it. No.
15 CHAIR BARROS-BAILEY: Okay. And I
16 know you have read our report. That's a
17 really big area of research that needs to be
18 done. It's one of the fastest-growing areas
19 in terms of claims, and a really big issue in
20 terms of disability determination.
21 One of the questions -- and I know
22 when I met with you I talked about and you

1 mentioned in your presentation that I'm a
2 rehab counselor, and I talked of my role as a
3 vocational rehab counselor and also a forensic
4 expert.
5 And I noted in your PowerPoint
6 presentation that you talked about voc rehab,
7 but I didn't see that you had anybody present
8 to you who came from the forensic community,
9 somebody with a legal background, somebody who
10 does expert witness testimony. And I just
11 wanted -- did you have any testimony, any
12 information in terms of the forensic
13 application?
14 MS. HILTON: No, we didn't.
15 CHAIR BARROS-BAILEY: Okay. And so
16 that goes to my question in terms of the third
17 bullet, that the database, the occupational
18 information system must meet a burden of proof
19 that the individual is actually not
20 theoretically capable of doing some kind of
21 work.
22 And so has there -- did the

1 National Academies of Science -- or how did
2 the National Academies of Science panel
3 consider this very important threshold in
4 terms of occupational information for the
5 disability determination process?
6 MS. HILTON: Right. Well, again,
7 we didn't consider that. I think one reason
8 that what -- our recommendation here would be
9 to create an interagency panel to look at this
10 in greater detail, is that we recognize that
11 we did not -- I mean, it is not only with
12 disability determination, but many other
13 areas, we began the process of looking into
14 the database in greater depth.
15 We identified areas that we thought
16 were problematic with our quick look, and we
17 think further study is needed.
18 CHAIR BARROS-BAILEY: Okay. So
19 insofar as further study has occurred since
20 these recommendations, I know that you noted
21 that one of the recommendations was basically
22 for something such as our panel, then that

1 would be additive to the recommendations that
2 the National Academies of Science panel has in
3 Chapter 8, is that what you mean by that?
4 MS. HILTON: Well, I think as Tom
5 mentioned it would -- you know, one of the
6 things we recommended that this interagency
7 group do would be to look at SSA's needs, and
8 obviously, you know, you have done that.
9 CHAIR BARROS-BAILEY: Okay.
10 MS. HILTON: So --
11 CHAIR BARROS-BAILEY: So in the
12 fourth bullet -- and I just want to bring this
13 one up, I'm not going to go through each of
14 these individually, because it's my
15 understanding that you didn't look at the
16 specific needs, is that correct, in terms of
17 any of the occupational information needs as
18 outlined in our report, that that was not
19 considered by the National Academies of
20 Science panel?
21 MS. HILTON: Well, this report came
22 out -- our report came out before your report,

1 so, you know, we couldn't address --

2 CHAIR BARROS-BAILEY: Our report

3 came out in September.

4 MS. HILTON: Oh, that's true, but

5 our committee had done its work. Our report

6 was in review at that point, so we were not

7 going to be making changes except in response

8 to review. So there was -- you know, it

9 wouldn't have been possible for us to look at

10 all of these things.

11 I mean, I would say in terms of

12 these three bullet points here, the reflect

13 work requirements, as Tom just mentioned, that

14 the analysis in Chapter 8, we did try to look

15 at what we thought -- what some RFC needs

16 were, specifically physical, and compare those

17 with some O*NET descriptors.

18 CHAIR BARROS-BAILEY: Okay. And I

19 know that Chapter 8 does mention our report,

20 and it also mentions our recommendations,

21 outlined --

22 MS. HILTON: Yes.

1 CHAIR BARROS-BAILEY: -- in the
2 report, so there was some cursory review of
3 our report, but not a consideration of our
4 report within the recommendations?
5 MS. HILTON: Right. Right. It was
6 -- you know, in editing some -- some of the
7 final editing of the report after it had been
8 through review, just to update it, was to
9 mention that your report had come out and try
10 to briefly capture some of the things that
11 were said. But the panel, no, did not
12 deliberate on your report's findings. the
13 panel finished its deliberations in late
14 April, with a final teleconference.
15 CHAIR BARROS-BAILEY: So if the
16 recommendations had been made before our
17 report was out, might that have impacted some
18 of the recommendations?
19 MS. HILTON: Certainly. I would
20 think we would have taken that into account.
21 CHAIR BARROS-BAILEY: Okay. Okay.
22 I'm going to open it up to the panel to see

1 if there are other questions for members of
2 the panel. Sylvia?
3 MEMBER KARMAN: Hello. Thank you
4 very much, Tom and Margaret, for coming out
5 today. I do have one question -- well,
6 actually, I've got a couple, but one that just
7 occurred to me. You mentioned that it, you
8 know, wouldn't be practical to gather data at
9 a more disaggregated level, and the level that
10 we've been really looking at.
11 I notice on page 7-10 of your
12 report that the second bullet under O*NET
13 content refers to occupational information is
14 not customized for jobs in a particular
15 organization. This inability to describe a
16 specific job in detail can limit O*NET's
17 utility for legal defensibility, and this is
18 for personnel selection. We face the same
19 issue --
20 MS. HILTON: Right.
21 MEMBER KARMAN: -- with regard to
22 any occupational information system that we

1 would need in order to meet our burden at step
2 5.
3 MS. HILTON: Yes.
4 MEMBER KARMAN: And so, therefore,
5 that is why that is so, you know, incredibly
6 important to us.
7 MS. HILTON: Yes.
8 MEMBER KARMAN: Among the questions
9 that I have is also page 2-2 of your report
10 provides five different questions that you all
11 felt were important in assessing an
12 occupational information system.
13 And they each -- one starts out
14 with, how general or specific will the
15 descriptors of occupational requirements be?
16 Second one is, given a particular level of
17 generality/ specificity, should the set of
18 descriptors of a particular occupational
19 requirement be a representative sample of all
20 possible descriptors of that requirement? Or
21 should it represent the entire universe of
22 descriptors?

1 Third one is, should each
2 descriptor of occupational requirements be
3 applicable to every occupation or unit of
4 analysis? Fourth is, is the taxonomy to
5 include genuine taxons, such as those that
6 exist in biology? This gets at the issue of
7 skills that you mention there. Certainly,
8 skills cannot necessarily meet the definition
9 of a taxon.
10 Five, can the taxonomy be designed
11 to serve a wide range of purposes among
12 diverse users? I'm wondering how the panel
13 answered those questions for O*NET, or did you
14 feel that the Department of Labor answered
15 those questions for O*NET? And then, also,
16 how did you all assess those questions in
17 terms of our -- the needs that were outlined
18 in Chapter 8?
19 MS. HILTON: I think that these
20 questions are raised as a way to introduce
21 this whole chapter, which is about the history
22 of the development of O*NET. You know,

1 basically, near the end it said that the
2 developers of O*NET have addressed all of
3 these questions.
4 So basically they are kind of
5 rhetorical questions, if you know what I mean,
6 saying how general or specific should this be?
7 And then, if you read the rest of the
8 chapter, you know, you will see that they
9 ended up with something they called OUs,
10 occupational units, and I think there were
11 about a thousand of them.
12 So I don't think these questions
13 are introduced, you know, with the idea that
14 then our panel is going to answer these
15 questions. As I say, it's a vehicle to get
16 you to read on and find out, you know, what --
17 how the developers address these questions.
18 And as for our panel's view on the
19 -- for the first question, how general or
20 specific, as I mentioned, our panel did not
21 agree on how general or specific it should be
22 and recommended that it was important to study

1 the pros and cons of being more and less
2 specific.
3 MEMBER KARMAN: Okay. I just want
4 to mention that when we -- our panel went
5 through the assessment of what basically SSA
6 gave the panel, its occupational information
7 needs, and a lot of what we did as a panel was
8 really address these kinds of issues.
9 And so what we're noticing is that
10 almost at every stage or at every question we
11 would have selected a direction that is
12 decidedly differently --
13 MS. HILTON: Different from what
14 O*NET took, yes.
15 MEMBER KARMAN: -- from what the
16 Department of Labor did, because their mission
17 is decidedly different.
18 MS. HILTON: Right, right.
19 MEMBER KARMAN: Thank you.
20 CHAIR BARROS-BAILEY: Dave?
21 MEMBER SCHRETLEN: Good morning,
22 and thank you very much. I have a question

1 that concerns sort of the first recommendation
2 in Chapter 8, and that is the recommendation
3 that SSA and the Department of Labor create an
4 interagency task force to study the viability
5 of potential modifications of O*NET to
6 accommodate SSA needs.
7 And my question concerns a point
8 that you make in Chapter 8 about the
9 behavioral anchors for the rating scales. I
10 think it's on pages 8 -- 6 and 7 of Chapter 8.
11 And you give an example of behavioral anchors
12 for arm -- I think arm stability, and the
13 example includes lighting a candle at a point
14 of two on the ability scale. This is hand
15 steadiness. And threading a needle at point
16 four.
17 And you make the point -- you
18 acknowledge in this report that there are
19 problems with these behaviors.
20 MS. HILTON: With those bars, yes.
21 MEMBER SCHRETLEN: And there are a
22 couple of them, and you cite a couple that are

1 very clear, and I think that you did an
2 excellent job of articulating some of the
3 problems.
4 I do think that there are others as
5 well that are not articulated there, but I
6 think that the bars' anchors are intuitively
7 appealing, but had a lot of scaling problems.
8 And you mentioned the lack of specificity.
9 In fact, that's sort of a theme that runs
10 through, you know, Tom, your presentation as
11 well, that the 52 abilities may lack some
12 sufficient specificity for SSA's needs.
13 But with regard to this behavioral
14 anchors, and the problems, those behavioral
15 anchors and the 52 abilities that they have
16 been used to assess, have been applied to the
17 1,102 occupational units in O*NET. And my
18 question is this: if those behavioral anchors
19 lack enough specificity for SSA's use, and
20 have other scaling problems, how could it be
21 modified, how could the existing database be
22 modified for SSA's use?

1 It seems to me that the only
2 modification would be to essentially start
3 from scratch, because you can't simply go back
4 and reapply new behavioral anchors to the
5 existing database. The existing database was
6 developed using these behavioral anchors, and
7 so the -- my question is: can you envision a
8 way of modifying O*NET that does not include
9 replacing O*NET?
10 MS. HILTON: I think that it
11 deserves further study. That is what we
12 recommended, that it needs to be studied. But
13 one thing I would mention is, you know, in
14 terms of the analysis in Chapter 8, that the
15 whole focus -- it does not focus only on the
16 abilities domain. You know, it also talks
17 about the work context domain, and some of the
18 other domains.
19 I mean, that is the thing about
20 O*NET. As Tom mentioned, it is a general
21 purpose. It is very big. It has 239
22 descriptors. It is like please all, please

1 none, you know. It was designed for many
2 purposes, and it doesn't serve any one user
3 exactly the way that user would like it to be.
4 MEMBER SCHRETLEN: In fact, one of
5 the things you said is that the panel could
6 not agree on the appropriate level of
7 aggregation.
8 MS. HILTON: Yes.
9 MEMBER SCHRETLEN: And that some
10 people might think of that as a problem of the
11 panel, but it strikes me that it's really not
12 a problem of the panel at all, but the fact
13 that O*NET -- that Department of Labor has
14 attempted to make a sort of all-purpose
15 occupational information system.
16 And there are -- different purposes
17 have different requirements, of course. So
18 for some reason, as you pointed out very
19 appropriately, some users might want a more
20 aggregated, more disaggregated system.
21 But my question about this bars issue is
22 really not one that I think further study

1 could address, because it's illogical. My
2 question is: is there a logical way -- is
3 there a way that it could be modified without
4 replacing it? And I don't think that that's a
5 question that really -- that further study
6 will answer. I think it's a question that --
7 is it that a logical analysis of the existing
8 system leads to an answer?
9 MR. PLEWES: I agree with you. I
10 don't believe that you can fundamentally
11 change the anchors and retain the system as it
12 is. But the panel didn't look at that.
13 That's just my sitting here thinking about it.
14 Now, how about tweaking?
15 MEMBER SCHRETLEN: That's what I'm
16 asking.
17 MR. PLEWES: I think it would be
18 possible, with proper research, to tweak. If
19 indeed the result of the tweaking brought it
20 closer to the Social Security Administration's
21 RFCs than the current system, without
22 fundamentally changing the result.

1 MEMBER SCHRETLEN: Okay. So that
2 is -- so that is wonderful. Then, how -- can
3 you imagine even one way that it could be
4 tweaked? That's what I'm trying to get at.
5 I'm trying to understand how this could be
6 done without fundamentally recreating the
7 database, because, you know, either the bars
8 --
9 MR. PLEWES: I don't give you an
10 answer. In a research approach, I would think
11 -- I would compare results of current with the
12 tweaked, and then to see what the differences
13 are. But I don't know.
14 MEMBER SCHRETLEN: So you are
15 suggesting like starting with new behavioral
16 anchors.
17 MR. PLEWES: Yes.
18 MEMBER SCHRETLEN: On some of the
19 existing occupational units.
20 MR. PLEWES: On those of most
21 interest, where the deviation between the
22 descriptors, the anchors -- current anchors

1 for the descriptors and the RFCs are -- have
2 the greatest differences that are very, very
3 important to the Social Security
4 Administration processes. But that's me. I
5 -- the panel didn't look at that, I have to
6 tell you.
7 MEMBER SCHRETLEN: Right. I guess
8 the question is, if you were to find a
9 correspondence between revised behavioral
10 anchors and existing behavioral anchors, that
11 still wouldn't answer the question of what to
12 do about levels of ability that fall between
13 those points on the scale.
14 MR. PLEWES: No.
15 MS. HILTON: I mean, we definitely
16 thought there needed to be research on the
17 behavioral anchors, but all of our research
18 recommendations don't necessarily mean that we
19 think that O*NET has to be rebuilt from the
20 bottom up.
21 There are always costs and benefits
22 to making any change to a big system like

1 this, and this is why we thought they needed
2 an outside ongoing expert technical advisory
3 committee, one of the reasons being to
4 prioritize what research is most important,
5 and, secondly, what are the potential costs
6 and benefits.
7 You know, some people are very,
8 very critical of the behavioral anchors in
9 O*NET. Our dissent, if you read the dissent
10 to our report, the two dissenters say, "Just
11 get rid of -- get rid of the behavioral
12 anchors on the level scale," because they are
13 so problematic. The rest of the committee did
14 not agree with that.
15 Nevertheless, even the dissenters
16 do not say we should scrap O*NET, that we need
17 to start over. So as Tom mentioned, there are
18 a lot of tweaks. You can make modifications.
19 And then, there are costs and benefits to
20 doing that.
21 CHAIR BARROS-BAILEY: When you say
22 "tweaks," what do you mean?

1 MS. HILTON: For example, the two
2 people that dissent to say that we should get
3 rid of the level scales in the abilities and
4 skills domains, and only use the importance
5 scale, and that they also suggest maybe we
6 should be looking at other scales, such as
7 frequency or duration.
8 I think that relates a little bit
9 to the Chapter 8, the comparison of how much
10 time do you spend sitting, kneeling,
11 crouching, and it is like half the time, all
12 the time, whereas for RFC purposes you need
13 actually number of hours. So things like
14 that.
15 CHAIR BARROS-BAILEY: And you
16 mentioned the work context, you are referring
17 to 38 in your slide that talks about how much
18 time in your current job do you spend
19 kneeling, crouching, stooping, and crawling.
20 MS. HILTON: Right.
21 CHAIR BARROS-BAILEY: And for
22 disability determination, we might have

1 somebody who has a shoulder injury who can do
2 kneeling, crouching, and stooping, but they
3 can't do crawling, because that involves the
4 upper extremity. So are you talking about not
5 just changing the anchors but also changing
6 the descriptors?
7 MS. HILTON: Definitely. I mean,
8 we called for research into the descriptors.
9 We said that the content -- what was the exact
10 language? The content validity of the domains
11 and the descriptors is uneven. We think that
12 in some domains, like abilities, the
13 descriptors are stronger, they have a stronger
14 research base. In some of the other domains,
15 like knowledges and skills, there is not such
16 a strong research base.
17 So here again, I mean, I think some
18 people would say that our report is radical,
19 because how could you go back and look at the
20 content model. The content model is perfect,
21 it's -- you know, it was studied. It was
22 studied a long time ago. We think it is time

1 for a fresh look at this.

2 CHAIR BARROS-BAILEY: Sylvia, and

3 then Shanan.

4 MEMBER KARMAN: Okay. I guess it

5 seems like the panel must have had some

6 things, though, in mind, you know, just sort

7 of piggybacking on what David has asked, and

8 Mary has brought up, because, you know, on

9 page 8-3 the panel -- the National Academies

10 of Science report, its panel stated that the

11 panel is not advocating the adoption of O*NET

12 by SSA, or the development of a hybrid O*NET

13 disability system in the disability

14 determination process.

15 However, we conclude that a

16 considerably modified or expanded O*NET would

17 be capable of informing the disability

18 determination process.

19 So for one -- one question I have

20 is that this seems contradictory, but, you

21 know, then the other question I have is, given

22 the discussion that we've just had for the

1 last few moments, it seems as if you all may
2 have had something in mind, what would that
3 modification look like that would not, as
4 David pointed out, or as Mary brought up,
5 really require extensive change to the point
6 where it would be impractical and not a cost
7 savings in terms of, you know, not requiring
8 two different systems.
9 MS. HILTON: And I have to say I
10 really can't answer this question, because, I
11 mean, this is really what the panel thought,
12 what we have here in the report. The panel is
13 not meeting anymore. As Tom mentioned, you
14 know, we didn't look in-depth at this whole
15 disability question. We took a quick look,
16 and we thought it needed further study. And
17 since it was important to both agencies,
18 that's why we suggested that the two agencies
19 study it together.
20 CHAIR BARROS-BAILEY: Shanan?
21 MEMBER GIBSON: My question will
22 likely be a simple followup to that, then, or

1 actually I have a couple of questions. The
2 first was, I noted that the chapters did not
3 identify the primary authors for each chapter.
4 Is it possible to find out who the primary
5 chapter author was for Chapter 8, so that, for
6 example, in this case we could ask them, what
7 were their thoughts perhaps related to those
8 comments, so that we understand better, so we
9 have the information going forth.
10 MS. HILTON: No, I don't think so.
11 You know, it is a committee consensus report.
12 If one panel member did take a lead on a
13 chapter, that chapter did not go forward for
14 inclusion unless the rest of the committee
15 agreed to it. So we really try to talk about
16 these as committee reports, not -- they are
17 not like edited chapters by individual
18 authors. It's a consensus.
19 MEMBER GIBSON: It just seems that
20 there is very great distinctions among how the
21 different chapters are written, so, for
22 example, Chapter 7 does a very good job of

1 identifying specific issues related to
2 psychometrics, which might impact the use of
3 the O*NET. And then, we see nothing similar
4 to it in other chapters, like ours, so I'm
5 thinking one person probably wrote this
6 chapter, and so their styles are very
7 distinctly different, which is what leads me
8 to that conclusion.
9 My other -- my second question --
10 so I guess I have three now -- is in the very
11 beginning of your discussion you talked about
12 how you received a review of the report and
13 created a response to the reviews. Are those
14 part of open documentation, so that we could
15 look at them as well?
16 MS. HILTON: No, they're not.
17 MEMBER GIBSON: Okay. And then, my
18 final question is simply to try to make
19 certain I understand kind of your overall
20 theme here. Is it a -- am I understanding
21 correctly when I say that it appears the
22 overarching decision of the panel was that the

1 O*NET is a general purpose instrument, which
2 means it will meet the needs of some but not
3 the needs of others, it will meet the needs of
4 individuals and groups to differing degrees,
5 and, therefore, other systems might be
6 necessary or appropriate to meet the needs of
7 different organizations.
8 MS. HILTON: I don't know that we
9 commented on whether other systems were
10 necessary, but certainly what you said about
11 how it's an all-purpose and it meets some
12 needs but not other needs, that's correct.
13 MEMBER GIBSON: So the logical
14 conclusion of it doesn't meet the need,
15 something else must --
16 MS. HILTON: It could be. I mean,
17 we have to -- we are representing what's here
18 in our report, so we can't --
19 MEMBER GIBSON: And that's --
20 MS. HILTON: -- go beyond what our
21 panel said.
22 MEMBER GIBSON: Okay. Thank you.

1 CHAIR BARROS-BAILEY: Tom?

2 MEMBER HARDY: Good morning. It is
3 a real pleasure having you here, and I -- I
4 would imagine all of us would like to spend
5 two hours talking with you, because we all
6 have volumes of questions. And so I'm not
7 going to take a lot of time, I just have two
8 because in my role here -- I'm a vocational
9 counselor, but I'm also an attorney.

10 So I've got two different
11 interests, and they are each -- and my
12 question is that -- I actually rather more
13 have a discussion than a question, if you want
14 to know the truth. One is more for you, Ms.
15 Hilton. Because of my vocational background,
16 I am very interested in skills, and in
17 transferability of skills.

18 And we are working right now on
19 coming up with a definition, and I noted in
20 the report you spoke several times about the
21 fact that O*NET doesn't truly define "skills,"
22 and that it is kind of difficult in some ways

1 to track skills using their raters for skills.
2 In doing that -- in reading that, I
3 also read went out and read a little further,
4 and I found your report on future skill
5 demands.
6 MS. HILTON: Okay.
7 MEMBER HARDY: Which I read, and I
8 thought it was fascinating. I really loved
9 reading this.
10 MS. HILTON: I'm glad you liked it.
11 MEMBER HARDY: You did a great job.
12 MS. HILTON: Thanks.
13 MEMBER HARDY: And it really made
14 me think about a lot of things. But what
15 really stuck with me -- and I go back to what
16 you said about we are very concerned about SSA
17 and what those needs are, but there is broader
18 context, and I get -- and that report really
19 broadened my context of how skills can be
20 used, and for workforce development, workforce
21 planning, education, and huge numbers of
22 things.

1 But what struck me was all the way
2 through here everybody kept commenting on how
3 O*NET was not going to be useful, for the most
4 part, in answering the workforce development
5 questions. Is that a good reading on this, or
6 am I kind of skewing it because of something
7 else?
8 MS. HILTON: Well, actually, I am
9 not sure that -- you are talking about the
10 workshop report on future skill demand.
11 MEMBER HARDY: Future skills, yes.
12 MS. HILTON: The people were
13 critical of O*NET in terms of its ability to
14 identify changes over time in the national
15 different skill demands of work.
16 MEMBER HARDY: Yes.
17 MS. HILTON: I think that someone
18 at the workshop did make that point. I do
19 think there are some questions, you know, if
20 you are looking at it strictly from a research
21 point of view, whether the data in O*NET could
22 be used, if you could track it for 20 years,

1 which it hasn't even existed for 20 years --

2 MEMBER HARDY: Yes.

3 MS. HILTON: -- and compare

4 versions of the database every five years, and

5 look at what levels of the skills were

6 reported in 1995, 2000, 2005. I mean, I do

7 think it's theoretically possible that you

8 could use O*NET for that purpose.

9 But with regard to that question

10 that you are talking about, I think that the

11 discussion in Chapter 7 of our current report

12 does a pretty good job of talking about how

13 very useful O*NET is for this kind of labor

14 market research as things change and as

15 economists try to understand what is growing

16 -- not only what is growing and shrinking,

17 but, you know, within jobs, within a given job

18 title, what the demands are.

19 MEMBER HARDY: And I get that, and

20 I guess what -- this is more of a discussion,

21 truly. I am wondering if we go ahead with

22 what we're doing, and get skills defined down

1 to a job level, and are able to really anchor
2 that and not use some of these O*NET
3 descriptors, which Dr. Spenner from Duke was
4 talking about the O*NET descriptors of skills
5 as being --
6 MS. HILTON: Ken Spenner from Duke,
7 yes.
8 MEMBER HARDY: Yes, being we'll
9 just say unwieldy. If we were able to get to
10 a better definition of "skill," take it to a
11 job level, and then actually track that,
12 wouldn't that be more useful than using O*NET
13 for those purposes, that this -- the other
14 paper was talking about?
15 MS. HILTON: I don't know. Like I
16 say, I mean, it is -- your question is very,
17 very theoretical. I mean, we are talking
18 about creating a whole new database, and the
19 first -- what you're talking about is the
20 first step. Then, is that database going to
21 be representative, you know, broadly
22 representative of the jobs in the national

1 economy? That's the second question.

2 The third question, you know, if it

3 had a better -- if it had better descriptors

4 of skill, yes, I think that could be useful.

5 MEMBER HARDY: Okay. My other

6 question is more of a legal question, because,

7 again, I'm an attorney, and I have to worry

8 about these things. And this is more for you,

9 Mr. Plewes. You were talking about doing some

10 tweaking or nuancing, and trying to find ways

11 where the marginal differences could be

12 brought down.

13 In constructing your report, did

14 you guys talk to any attorneys about legal

15 defensibility issue?

16 MR. PLEWES: We recognized that

17 there were those, but we -- no, we did not

18 talk to -- if I had known that we were going

19 to be here today, we probably would have gone

20 --

21 (Laughter.)

22 -- to an attorney as one of our

1 presenters, I can tell you that, and a
2 vocational rehabilitation person, thank you
3 very much. But no, we did not.
4 MEMBER HARDY: Okay. My concern is
5 that, you know, everybody on the panel looks
6 at me and goes, "Oh, you're the lawyer. Make
7 sure we've got it right." And one of the
8 things I always say back is, "If and when we
9 develop -- or when we develop this system,
10 every piece of it must be legally defensible,
11 because if one piece fails the test, the
12 entire system fails the test."
13 And in a broad sense, I kind of
14 come back to you and say if we're looking at
15 O*NET and I see in your report you speak
16 multiple times about areas that are flawed,
17 how can we -- how can we work around that if
18 there is a legal defensibility issue, in your
19 opinion?
20 MS. HILTON: Well, I'm not sure if
21 it's exactly the same thing, but I know that
22 some of the panel members that work in the

1 field of selection and development of
2 selection tests, which are very often subject
3 to legal challenges, mentioned that they find
4 O*NET information very, very useful, but they
5 use it as a starting point.
6 Like if they are trying to create a
7 selection test, they start with an O*NET
8 occupational description, and that gives them
9 the basic foundation of information. But
10 then, they add a lot more specific
11 information, specific to that organization,
12 that more narrowly defined job title, and so
13 forth.
14 MEMBER HARDY: Okay. I guess just
15 so you understand, when we go to court,
16 whether it's in Social Security or -- many of
17 those cases then end up in federal court,
18 which is subject to federal rules of evidence
19 as well.
20 If you build something on any
21 platform, that platform still must be
22 defensible under the same rules of evidence.

1 And that is an issue that I have.

2 MR. PLEWES: And I think the

3 question for your panel is to -- is to think

4 about O*NET in that case as a framework. And

5 I think it's fairly clear that O*NET is a

6 framework. It would probably be preferable to

7 the DOT as a framework in terms of some of the

8 things that it offers in terms of its tying to

9 the SOC and its updating, and so forth.

10 But that, as Margaret suggests from

11 other areas, that there probably needs to be

12 within that framework a lot of adjustment to

13 meet the requirements that you have.

14 MEMBER HARDY: So you would still

15 advocate O*NET over DOT as a basis.

16 MR. PLEWES: I think that was done

17 some time ago.

18 MEMBER HARDY: Okay.

19 MR. PLEWES: That decision was made

20 in terms of a framework for looking at the

21 issues.

22 CHAIR BARROS-BAILEY: I have --

1 MEMBER HARDY: I could talk to you
2 for hours.
3 CHAIR BARROS-BAILEY: Okay. I have
4 a quick question about that. In the days of
5 PDF, it's very easy to search a report in
6 terms of key word, so I did search the report
7 in terms of "legal" and saw that there were
8 only two references to it. One that Margaret
9 just mentioned, page 7-3, in terms of a
10 starting point, and the other one that Sylvia
11 had mentioned.
12 And in both of those instances it
13 -- it indicates that the O*NET is not
14 defensible, and so those were the only
15 mentions that I was able to find in the report
16 in terms of the defensibility. And so I think
17 Tom's question is, if when you look at pages
18 11 and 12 of our report in terms of the must
19 needs of an occupational information system,
20 and the third one being legal defensibility,
21 it becomes a really big issue, if, you know,
22 there are aspects of the O*NET that are not

1 legally defensible.

2 Mark, you had a question?

3 MEMBER WILSON: Yes. Welcome.

4 It's good to see you again. It's a real honor

5 to be here today speaking with you about very

6 important issues. And, as you see, I have to,

7 as the IO psychologist along with Shanan, deal

8 with very diverse sets of issues in terms of

9 making recommendations about occupational

10 information for this purpose.

11 And as you know, we exchanged some

12 correspondence, and so I -- and I know you

13 might not -- because Mary and others were

14 asking you some specifics about changes, but I

15 just wanted to check to see in a couple cases

16 if some of the things that we discussed might

17 have gotten changed.

18 The first one was early on in the

19 report it -- and we discussed this as a

20 potential typo -- refers to O*NET as a system

21 providing information about jobs when, in

22 fact, it is really an information system about

1 occupations. Do you remember if that got
2 changed to occupations instead of jobs?
3 MS. HILTON: I know we went through
4 the report before and after review, because we
5 got comments about that also in review. And I
6 think that in many places we changed the word
7 "job" to "occupation." But I don't believe we
8 changed it in every single place, and that was
9 partly for purposes of readability by someone
10 who doesn't know anything about occupations,
11 occupational analysis, or anything.
12 The term "occupation" had not yet
13 been introduced, so that you might still see
14 in some of the early pages of the report
15 references to "job."
16 MEMBER WILSON: Yes. And I think,
17 you know, the reason we discussed that was
18 because it is sort of -- O*NET clearly doesn't
19 provide, you know -- and it gets some of these
20 others, but, you know, I certainly understand
21 that.
22 The second question I had that we

1 discussed -- and this was kind of more of a
2 wish, I don't know -- and you talked about and
3 had a slide about the advisory panel, and in
4 your report you refer to it as external, and
5 we discussed the idea that we need to define
6 the term "external." This is not contractors.
7 Were you able to make any changes
8 there in your report to specify what you meant
9 by "external," so that when the agency got
10 this they would understand what that meant in
11 terms of your intent, or --
12 MS. HILTON: I am not sure what we
13 did there.
14 MEMBER WILSON: Sure. I completely
15 understand. The other two things in terms of
16 wishes -- and these I suspect you weren't able
17 to do a whole lot about, but I thought I would
18 ask. As other people have indicated, you
19 know, we don't get someone -- the National
20 Academies of Science prestige in work analysis
21 very often to look at these issues and make
22 these kinds of reports.

1 And so I was -- was as sort of my
2 wish list saying that I wish you would have
3 addressed evaluation issues and work analysis
4 in terms of specifying what some of the
5 criteria were that the external panel might
6 look at. Did you make any changes there to
7 say, you know, we want you to look at X, Y,
8 and Z? Or, you know, these are the --
9 MS. HILTON: Well --
10 MEMBER WILSON: -- fundamental
11 evaluation criteria that should be considered?
12 MS. HILTON: Right. As I
13 mentioned, our policy is not to make changes
14 to any major conclusions or recommendations.
15 So, I mean, that would involve making a change
16 to a recommendation with more detail, so --
17 MEMBER WILSON: Sure. No, I
18 understand. And the other thing we discussed
19 -- and some places you talked a little bit
20 about panel formation, things of that sort.
21 But it wasn't always clear what the
22 methodology was in terms of how the panel went

1 about -- you know, Tom mentioned that there
2 were experts that were aware of the literature
3 and did lit reviews and things of that sort.
4 But was there anything added more?
5 And I think this gets some to Shanan's
6 question. We really want to understand what
7 the mind of the panel was with regard to
8 several of these specific issues, because we
9 are struggling with them. If there is some
10 methodological issue that we need to address,
11 we want to know that.
12 Were there any expansion of, you
13 know, here's how we went about coming to this
14 particular conclusion in any cases? Do you --
15 MS. HILTON: Well, we did try to
16 base our conclusions on all of the input we
17 received in our two workshops.
18 MEMBER WILSON: Right.
19 MS. HILTON: And also, the panel
20 members' own expertise and knowledge. We
21 talked in closed sessions about what exactly
22 we thought our major conclusions would be. We

1 basically went through several rounds of
2 deliberation about our conclusions and
3 recommendations, where we were talking about
4 them in person, we talked about them in
5 teleconference, and then we would send them
6 out to the whole committee --
7 MEMBER WILSON: Yes.
8 MS. HILTON: -- trying to reach
9 consensus. And, you know, we did not reach
10 consensus on some issues, as you know.
11 MEMBER WILSON: Right. Absolutely.
12 And especially with regard to the disability
13 issue, you know, you mentioned that it was a
14 much more general panel, and this wasn't --
15 MS. HILTON: Right.
16 MEMBER WILSON: -- necessarily an
17 area where you acquired experts. Were any
18 disability experts, as part of the methodology
19 you describe, which is sort of trying to gain
20 consensus -- did you -- did they bring anybody
21 with expertise in for any of those
22 deliberations other than the panel meetings

1 and --

2 MS. HILTON: No.

3 MEMBER WILSON: The next issue,
4 which you had in your slides and I wanted to
5 ask your thoughts on, is that the effective
6 measurement error is unclear. And as you
7 know, in the second panel meeting, Dr. Harvey
8 made a presentation where, among other things,
9 he looked at calculation of reliability
10 coefficients in O*NET data.

11 MS. HILTON: Yes.

12 MEMBER WILSON: And he made the
13 point that -- which is unique to generic work
14 analysis, that there are lots of "does not
15 apply" responses in any sort of occupational
16 level profile that would be generated. So in
17 any individual case, a large part of the O*NET
18 descriptors in whatever domain are not going
19 to be relevant to describing that particular
20 occupation.

21 And so when you calculate
22 reliabilities on the entire profile, you get

1 numbers that look pretty respectable, but he
2 presented data that seem to -- when you
3 calculate the reliability on just those things
4 that are relevant, there are dramatic,
5 breathtaking, shocking declines in terms of
6 the stability of these data.
7 So I guess my question is: was
8 there something unpersuasive about that data?
9 Or why is it that the panel seemed to come to
10 the conclusion that there were unclear
11 measurement effects?
12 MS. HILTON: Do you mean, how did
13 we come to the conclusion that the effects on
14 measurement error are unclear, because every
15 new method adds to the uncertainty?
16 MEMBER WILSON: Well, I just meant
17 that that data was pretty persuasive to me,
18 and its impact in terms of the following panel
19 discussions, you know, I mean, it just seemed
20 like that presentation sucked a lot of air out
21 of the room in terms of, you know, I mean,
22 there were people that seemed shocked when

1 they saw the reliability coefficients that
2 were calculated on some of these data that
3 people are using that appear to be almost
4 noise.
5 I guess that's what I'm saying is
6 is that why -- my question is: was there
7 something about that presentation that was
8 unpersuasive with regard to measurement error?
9 Or why was there the conclusion that
10 measurement error effects were unclear? Is it
11 just because of the multi-method, is that what
12 you're saying?
13 MS. HILTON: Right. That
14 conclusion is really focusing on the whole
15 multi-method issue.
16 MEMBER WILSON: Yes.
17 MS. HILTON: It relates to the
18 whole issue of using job incumbents, but also
19 occupational analysts.
20 MEMBER WILSON: Right.
21 MS. HILTON: The fact that job
22 incumbents have strengths and weaknesses as a

1 data source.

2 MEMBER WILSON: Right.

3 MS. HILTON: They have the

4 strength, they -- obviously, they work in the

5 job, so they know something about it. But as

6 you very well know, there is a tendency for

7 job incumbents to inflate --

8 MEMBER WILSON: Absolutely.

9 MS. HILTON: -- you know, the

10 abilities and skills of a job. Similarly,

11 within occupational analysts, again, you have

12 strengths and weaknesses, strengths that you

13 are dealing with someone who is very well

14 trained to do this kind of ranking --

15 MEMBER WILSON: Absolutely.

16 MS. HILTON: -- a weakness that

17 they are not as familiar with the job, with

18 the occupation, and depending on the quality

19 of information you provide to them, or whether

20 they would get a chance to actually go to the

21 field, which in O*NET case they do not

22 actually go. So that's what that conclusion

1 is really based on.

2 MEMBER WILSON: Those are all

3 excellent points, especially that issue of

4 inability to observe. In fact, what I would

5 suggest is that that may be the reason why

6 some of these data were presented -- are what

7 they are, that these people aren't necessarily

8 providing data based on direct observations of

9 what actually occurred.

10 MS. HILTON: Yes.

11 MEMBER WILSON: And then, my --

12 it's not so much a question. It is taking me

13 a while, but I'm trying to learn from Tom and

14 Nancy. It seems like the sort of crux of the

15 discussion here, which your panel dealt with

16 and ours dealt with, and that I described to

17 you as sort of a fundamental distinction or a

18 different way of thinking, I suspect I know

19 who on the panel was more concerned about

20 disaggregation, because IO psychologists have

21 to deal with things at the organizational

22 level, at the job level. And I described it

1 there as a distinction between the econometric
2 and the ergometric approaches to doing work
3 analysis.
4 And I'm just wondering about your
5 thoughts. I understand the efficiency
6 argument, and I very much understand the
7 currency argument. Shanan and I made some
8 presentations where there is good
9 interreliability here between what you are
10 recommending and what we said with -- you
11 know, you can have the greatest data system in
12 the world, and if it's not current, that is a
13 problem.
14 And you're right, as the number of
15 descriptors and the number of disaggregation
16 increases, there is definitely more data cost.
17 But I'm just wondering, is it possible that
18 the sort of top-down econometric, more
19 rational, big picture is very different than
20 the sort of bottom-up, here is work as it
21 actually exists in the economy. I mean, do
22 you have any thoughts on that?

1 Is that potentially an area where
2 we can sort of find that there really maybe
3 are two fundamental different approaches that
4 can't be very easily reconciled, and that
5 trying to reconcile them is always going to be
6 a sort of lever between either making the
7 econometric approach unhappy, because there is
8 too much detail, or, you know, perhaps moving
9 in the other direction now where there is
10 simply not enough detail from a defensibility
11 -- any thoughts at all on that or --
12 MS. HILTON: Do you have any
13 thoughts about that?
14 MR. PLEWES: Just hearing you, when
15 we had our meeting, and again now, we
16 certainly wish we had invited you to give a
17 presentation before the panel, because I think
18 some of these thoughts probably would have
19 been very valuable to them, and they would
20 have been willing to address them.
21 In their saying that they -- that
22 they like the idea, I'm putting words in

1 there, but the recommendation is that if we
2 don't change at least the linkage between the
3 SOC and the O*NET, that kind of they say that
4 the top-down approach -- that is, that the
5 importance of the linkage to the national
6 databases is very, very important.
7 Now, what they didn't do is take a
8 look at what you are suggesting, and that is
9 that there may be another way of looking at
10 this. I didn't see evidence that they had
11 given that full thought.
12 MEMBER WILSON: Well, I certainly
13 agree, and I think that the sort of -- there
14 are a couple of questions here. One is the --
15 how do you describe the work? And, you know,
16 am I going to be able to defend whatever the
17 analysis is when Tom halls me into court? You
18 know, all those kinds of issues.
19 But I think you make an excellent
20 point that linkage back to what Social
21 Security is not going to be able to do is have
22 their own Bureau of Labor statistics and make

1 projections about where -- you know, so I
2 think that linkage -- and, in fact, we made
3 significant recommendations in that area to
4 link back to those systems. I think we are
5 very aware of the value of the econometric
6 approach and that -- from a sampling
7 standpoint.
8 In conclusion, I just -- welcome to
9 my world. I know that this is sort of a
10 departure from how you normally conduct
11 business and things of that sort. I very much
12 appreciate you being here. I mean it when I
13 say it -- you know, it has been an hour to
14 interact with you on these issues, and I
15 appreciate the expertise that you bring to
16 this topic.
17 So thank you.
18 MS. HILTON: Thank you. Thank you
19 for giving us an opportunity to share the
20 panel's work with you all.
21 CHAIR BARROS-BAILEY: Thank you.
22 Bob, do you have a question?

1 MEMBER FRASER: No, it's really
2 more of a comment. I'm a vocational
3 rehabilitation counselor and rehab
4 psychologist also, and I and the folks -- the
5 counselors in my unit, we do use O*NET for
6 purposes of vocational exploration and career
7 guidance.
8 But in responding to a company
9 relative to the legal defensibility whether a
10 person can do a job, we simply can't use it,
11 because it's functionally and skill-related,
12 etcetera, it's simply not discrete enough.
13 It's relative. So relative doesn't work, you
14 know, for us, and that's part of our charge
15 here in SSA.
16 And kind of going back to Dave's
17 comment, you know, or the issue is, can we
18 tweak these scales? Well, you know, we have
19 that problem with aggregation, you know, so
20 say we have 18 truck drivers in that
21 occupation. So we have anybody from an access
22 van driver to an interstate trucker, you know,

1 a wide variance in terms of the demands of
2 that kind of -- for those different types of
3 jobs.
4 So I just don't see how, in an
5 interagency effort, how we could work on this
6 tweaking with this core problem of aggregation
7 being an occupation versus the range of jobs
8 being represented.
9 MEMBER SCHRETLEN: In fact, as I
10 was thinking further about it, I thought maybe
11 I was not very clear in my question. But just
12 sort of following up on that, I think the idea
13 of what a modified O*NET system might look
14 like, I'm trying to envision that.
15 And it seems as though, based on
16 the things that you have said in your report,
17 the limitations of O*NET that you have
18 acknowledged or recognized, that at minimum a
19 modified system would need to not merely add
20 more specific jobs, but actually replace a lot
21 of the occupations, because they are so
22 broadly aggregated, or occupational units,

1 because Social Security simply cannot compare
2 an applicant to an occupational unit. They
3 have to compare them to jobs, specific jobs,
4 or, you know, clusters of jobs.
5 So it would at least require a very
6 broad supplementation, if not a complete
7 replacement, of those occupations, that the
8 abilities that are rated, the job
9 characteristics that are rated would have to
10 be more specific. And if they're more
11 specific, you can't -- you would have to go
12 back either to previously evaluated ones and
13 add those, or start from scratch with new
14 ones, and evaluate those new dimensions of job
15 characteristics.
16 And in any case, you would have to
17 go back, because the bars are problematic.
18 And in a sense, you would have to revalidate
19 all of the ratings across the entire system,
20 and that's why I'm saying I just don't -- it's
21 hard for me to imagine how -- I mean, we can
22 use the word "modification," but it's a -- it

1 would be a radically different system. That's
2 the only thing that I can imagine. I mean,
3 can you imagine -- can you help me imagine
4 some way that it's not that?
5 MS. HILTON: I have a very weak
6 imagination.
7 (Laughter.)
8 But I guess what I wanted to
9 mention is that this whole issue of, you know,
10 once you've created something, and O*NET is
11 very big, do you want to change it? Can you
12 change it? If you change it, will it disrupt,
13 you know, what we have in place?
14 And I guess I would just say that
15 our panel felt that it was worth causing some
16 disruption if it would result to longer-term
17 improvements in the quality of the data. So I
18 think that's true of any database. If you go
19 ahead and create your own, I mean, that's
20 something that you will always have to be
21 thinking about, because it's not like you just
22 create an occupational database at one point

1 in time and just leave it. So --

2 CHAIR BARROS-BAILEY: Nancy?

3 MEMBER SHOR: Thank you. I want to

4 thank you very much for coming. This has

5 really been fascinating. I am interested in

6 what sort of response you have received

7 formally, informally, that you expect to

8 receive from the Department of Labor, that we

9 -- we are kind of asking you questions about

10 how O*NET could be modified, how O*NET could

11 be changed, and I think in many ways those

12 questions really are best directed to them.

13 But, you know, your process is

14 extremely familiar to you, but not to me. Is

15 there a role, has there been a role, do you

16 anticipate a reaction from them?

17 MS. HILTON: Well, we had a

18 briefing with them in late November, and they

19 seemed really interested in a whole report.

20 They are very surprised by some thing, like

21 when we mentioned that green jobs might not --

22 might be a distraction from the core database

1 they all like were shocked, because they are
2 very focused on green jobs these days.
3 Since that initial briefing, we
4 haven't really heard from them. As Tom was
5 mentioning at breakfast, we think that when
6 the printed report comes out that they will
7 pay more attention once again. I can say with
8 specific regard to that recommendation for a
9 joint interagency task force that they were
10 very interested. They thought -- they seemed
11 to think that that would be a great idea, that
12 they would love to coordinate more closely
13 with SSA.
14 CHAIR BARROS-BAILEY: And when I
15 started the meeting, I talked about what the
16 Commissioner has asked us to do in terms of
17 the four points. And one of them was the
18 recruitment, training, and certification of
19 field job analysts. So I was looking for a
20 lot of that information in your report to see
21 how the panel came at that.
22 And the sense I get is that it

1 wasn't really even a question addressed. And
2 my question, because I'm a little intrigued by
3 that, my question is, especially in light of a
4 whole chapter on technology, when the APDOT
5 was looking at data collection methods, and
6 ruled out the use of field job analysts, the
7 technology was very different then. There has
8 been a lot that technology has done in the
9 last 20 years.
10 So was there -- I'm just wondering
11 why there has -- there wasn't even a question
12 of the use of field job analysts and data
13 collection with O*NET, in light of the fact
14 that it had been almost 20 years since the
15 APDOT started their work that led to a lot of
16 the decision-making and design.
17 MS. HILTON: I guess I would just
18 say that the -- that issue appears slightly in
19 Chapter 2 in the whole discussion of the data
20 collection and the fact that the occupational
21 analysts in O*NET don't go to the field and
22 don't -- you know, they only receive paper

1 descriptions.

2 But it wasn't something that our

3 panel really looked at, because we were trying

4 to look at O*NET as it is now. Actually, I

5 don't know whether it's still relevant, but if

6 you are interested in this whole question

7 about field job analysts you might want to go

8 back and look at the 1980 report, because they

9 found a lot of problems where those field job

10 analysts were not following the protocols that

11 had been developed nationally, and also they

12 weren't even finding enough -- there were

13 supposed to be at least three analysts I

14 believe rating every job title, and in a lot

15 of cases there was only one or two.

16 So it is a very complicated issue,

17 and there might still be something in that

18 older report that would be relevant, as you

19 think about that now.

20 CHAIR BARROS-BAILEY: Thank you.

21 Dave?

22 MEMBER SCHRETLEN: Yes, one other

1 question about the recommendation to focus
2 resources on core database activities, leaving
3 development of most new applications and tools
4 to others.
5 If Department of Labor asked you,
6 would you regard expanding the use of the
7 O*NET to make it suitable for disability
8 determination a core part of the database
9 activities, or is that one that you would
10 advise them to farm out to others?
11 MS. HILTON: Well, that's one
12 reason we suggested a user advisory panel to
13 try to deal with some of those issues. But,
14 you know, we definitely recognize that
15 different users have different needs, and this
16 whole area of application -- yes, it's -- you
17 raise a very good question. That's all I can
18 say. I don't have the answer to it, but it's
19 an important point.
20 CHAIR BARROS-BAILEY: Tom asked
21 some questions about skills. And I noticed
22 there was not a discussion about the

1 application or the importance of skills and
2 skills transfer within Chapter 8, but there
3 was in other areas of the report a lot of
4 discussion about skills.
5 As a matter of fact, Chapter 10,
6 the number one priority in terms of all of
7 your recommendations is conducting research on
8 the content model, beginning with skills and
9 knowledge demands.
10 MS. HILTON: Right.
11 CHAIR BARROS-BAILEY: And I know
12 your report talks about that there were even
13 problems of how to define skill, and I think
14 there were like four or five different
15 definitions, and then the one that was arrived
16 at was -- which was sociotechnical skills, it
17 indicates that there was a view that this was
18 the most prominent. There was no underlying
19 researcher data to bolster that decision. So
20 what is currently being used as a theoretical
21 framework for skills does not have a body of
22 research.

1 Are you aware of how skills domain
2 within the content model for the O*NET is
3 applied, or can be applied in disability, or
4 any transferable skills assessment?
5 MS. HILTON: Not specifically with
6 regard to disability, but in Chapter -- I
7 think it's Chapter 6 in the workforce
8 development chapter, we talk about a number of
9 electronically created databases that link the
10 various domains in O*NET -- skills, abilities,
11 knowledges -- and compare that with what an
12 individual has, what they think their level of
13 it is, and then it can be linked to other
14 jobs. So there is some progress being made in
15 that area.
16 CHAIR BARROS-BAILEY: And I think
17 one that I saw on the O*NET Academy was one
18 called TORQ.
19 MS. HILTON: Yes.
20 CHAIR BARROS-BAILEY: And that
21 talks about an RV team assembler in northern
22 Indiana, where, through that system, the

1 transferable skill that is derived is a dental
2 hygienist.
3 MS. HILTON: Oh, right.
4 CHAIR BARROS-BAILEY: But in
5 disability determination, retraining cannot be
6 considered when looking at transferable
7 skills. We're looking at residual, not rehab
8 potential.
9 MS. HILTON: I see.
10 CHAIR BARROS-BAILEY: So in that
11 instance, I haven't found a way to be able to
12 use any of the O*NET data for transferable
13 skills assessment, where we are looking at
14 residual issues instead of rehab potential.
15 Have you seen that application whatsoever?
16 MS. HILTON: I guess I -- I am not
17 that familiar, but what is just popping to
18 mind -- and I don't know that this is really
19 ever done. I am more familiar with the
20 applications that I mentioned to you, like
21 TORQ.
22 It seems that, in theory at least,

1 that a person could use O*NET, or a counselor
2 working with a person could use O*NET, and
3 whatever jobs, occupations they had had in the
4 past, jobs could be linked to O*NET
5 occupations, and then the level of the
6 different skills, knowledges, and so forth,
7 required in those previous occupations could
8 be identified.
9 Then, it would be possible to
10 identify other occupations that use those same
11 levels of skills and identify a new
12 occupation, without requiring any training in
13 between, if you see what I mean.
14 CHAIR BARROS-BAILEY: Yes. And I
15 think -- I think when we look at the
16 occupational unit that is representative of
17 the team assembler and the dental hygienist,
18 and we look at the DOTs -- the aggregated
19 initially under those OUs, they were pretty
20 heterogeneous as opposed to homogeneous, and a
21 lot of other --
22 MS. HILTON: Yes.

1 CHAIR BARROS-BAILEY: And so it was
2 still -- it would be very difficult for me as
3 a vocational expert to have Nancy or Tom
4 cross-examine me and say, "How did I go from a
5 team assembler to a dental hygienist?" in
6 terms of transferability.
7 MS. HILTON: I see.
8 CHAIR BARROS-BAILEY: Particularly
9 if I can't consider retraining.
10 MS. HILTON: And proving that they
11 really were capable of becoming the dental
12 hygienist without any retraining, is that what
13 you're saying?
14 CHAIR BARROS-BAILEY: Correct.
15 MS. HILTON: Yes.
16 CHAIR BARROS-BAILEY: Or
17 licensing --
18 MS. HILTON: Yes, right.
19 CHAIR BARROS-BAILEY: -- in many of
20 the states.
21 MS. HILTON: Right, right.
22 CHAIR BARROS-BAILEY: Okay. Any

1 other questions? Deb?

2 MEMBER LECHNER: I get the

3 underlying current from your report that one

4 concern about maintaining two separate

5 databases is the cost effectiveness issue of

6 Social Security Administration maintaining a

7 separate database from Department of Labor.

8 But I didn't see anything in the

9 report that spoke to the cost effectiveness of

10 the data collection methodology used by

11 Department of Labor at the present time. And,

12 you know, when you look at 100 occupations a

13 year, and $6 million a year to maintain an

14 updated database, that sort of rounds out to

15 $60,000 per occupation, so -- which I find is

16 really an astounding number.

17 So I just wondered if there was any

18 consideration to the current cost

19 effectiveness of the process.

20 MS. HILTON: I guess the -- we

21 didn't really reach a conclusion here, but we

22 did talk at least -- I think in two places in

1 the report we talk about the whole tradeoff
2 question. There was certainly an idea that if
3 some research was conducted on some of these
4 domains and descriptors that perhaps not all
5 of those descriptors were necessary, because
6 there are 239, which is a very lot. Maybe
7 that's why it costs $60,000.
8 So if research would find that
9 there would not need to be quite so many
10 knowledges or skills or problem-solving, which
11 appears in four different places, so that what
12 -- it's called pruning, the idea of pruning it
13 down a little bit, that would definitely
14 improve the cost effectiveness of it.
15 But we didn't go specifically into
16 the costs of, you know, doing surveying job
17 incumbents versus using occupational analysts,
18 and so forth. We didn't have the data to do
19 that for one thing.
20 CHAIR BARROS-BAILEY: Any other
21 questions?
22 (No response.)

1 Okay. I have one last question.
2 And you just heard from Deb Lechner. Deb is
3 the person that I mentioned when I met with
4 you, that she and Joe had done the study that
5 is mentioned in Chapter 8 in reference to the
6 IOTF. And that reference in Chapter 8 makes
7 it seem like the concept of the O*NET D was
8 being tested by that study, and in reality
9 that was a study of field job analysts.
10 And I -- is that an area of the
11 report that has been corrected in terms of a
12 clarification of what -- how that study is
13 represented?
14 MS. HILTON: Yes, we did make that
15 change.
16 CHAIR BARROS-BAILEY: Thank you.
17 Thank you.
18 Any other questions from the panel?
19 (No response.)
20 Thank you. It has been a great
21 pleasure to have you here. I think our
22 discussions are really important. There are a

1 lot of things that I learned in terms of your
2 process, in terms of where the report was
3 issued along that process. There were some
4 conclusions that I was coming to in terms of
5 what your report meant within that context
6 that I think were clarified today.
7 And I do want to point out to
8 everybody that there was a section of your
9 report on page 1-11 that I thought was really
10 important in terms of the distinction between
11 what we're doing here and the fact that we are
12 a panel that keeps on going, and that your
13 panel was really time-limited. And so I think
14 that's important to understand reports and
15 context.
16 And in page 1-11, it says in some
17 cases the evidence that could be assembled and
18 considered with the available resources and
19 within the timeframe of study was
20 insufficient, leaving the panel with
21 unanswered questions. And so I think that's
22 really important for us to acknowledge, that

1 what you said at the very beginning of your
2 presentation, that there were some areas that
3 you just didn't have an opportunity to
4 address.
5 And so I know some of our questions
6 are way more detailed than you had the
7 opportunity to cover. And so I thank you for
8 the time that you have spent with us today,
9 for answering our questions, and for the
10 opportunity to speak with you.
11 It looked like Mark wanted to say
12 something. Did you want to say something?
13 Okay.
14 MEMBER WILSON: Just more of a
15 comment in terms of this, because I think it's
16 a very relevant issue, this sort of cost-
17 benefit analysis, and the resources required
18 to keep things current and up to date.
19 And if you look at it from a sort
20 of classical occupational analysis standpoint,
21 and you're the Department of Labor, where this
22 is a relatively small, you know, potentially

1 in some bureaucrats' minds, insignificant part
2 of what the Department of Labor is all about,
3 the resources that one might devote to that,
4 and the justification for those resources is
5 very different than, you know, I perhaps I
6 should have, but it wasn't until fairly far
7 into the process that I understood the scale
8 of the operation on which Social Security
9 operates, the underlying industries, in terms
10 of private insurance.
11 So the costs in terms of
12 litigation, the costs in terms of getting this
13 right, are enormous. And so if you look at it
14 as a percentage of DOL's budget, in terms of
15 what might be devoted to this issue, you might
16 come to a very different cost-benefit analysis
17 than if you look at it in terms of the $140
18 billion, plus perhaps another $140 billion in
19 private benefits in terms of justifying the
20 effort to do a more bottom-up, job-oriented,
21 more detailed set of descriptors. Just a
22 thought.

1 CHAIR BARROS-BAILEY: Thanks, Mark.
2 And that was something we talked about when
3 we met with you in January, the $140 billion a
4 year that is used -- spent by Social Security
5 on disability for beneficiaries and their
6 dependents, $128 billion of that for
7 beneficiaries.
8 And if we would take that
9 equivalent amount of money and apply it to the
10 federal budget, in terms of the discretionary
11 spending, that it would equate to about 14
12 budgets of federal agencies including NASA,
13 including the federal courts, including the
14 executive office, including Congress. When we
15 started adding all of those up, it was pretty
16 huge to see the impact of disability. And
17 that was jus t he federal impact; it didn't
18 include private insurance.
19 And so you could see that we are
20 very passionate as a panel in terms of what we
21 are doing, because this has huge implications
22 to people we see on a daily basis.

1 So I want to thank you again. We
2 recognize that disability determination, and
3 its application in terms of the O*NET, was but
4 one of the many parts of the O*NET that your
5 panel evaluated. And there were time and
6 resource issues that you could not control
7 that caused limitations and delimitations to
8 the scope of your work.
9 We want to thank you for your time
10 to come here to St. Louis and be with us here
11 to present in terms of the panel's findings.
12 We recognize your hard work over there. We
13 recognize it. And you worked for over a year
14 on it, and I know that you continue to work.
15 One of the things we talked about
16 over breakfast was how long after a panel
17 finishes its work do you present, and you said
18 it could be years that you might be presenting
19 on this. So we know that it continues for
20 you, although the panel has been disbanded.
21 So we want to thank you for your
22 insights. They have been tremendously

1 helpful, and that you have provided to us as
2 we report back to Commissioner Astrue in terms
3 of our findings.
4 Thank you.
5 MS. HILTON: Thank you for inviting
6 us.
7 CHAIR BARROS-BAILEY: Okay. We
8 will take a 15-minute break and resume our
9 meeting.
10 (Whereupon, the proceedings in the foregoing
11 matter went off the record at 10:46
12 a.m. and went back on the record at
13 11:12 a.m.)
14 CHAIR BARROS-BAILEY: Okay. Let's
15 come back on the record, please.
16 I think that the meeting this
17 morning was incredibly valuable. I learned a
18 lot from the process. One of the things that
19 most stood out for me was that although our
20 report is referenced in Chapter 8, when I
21 talked to Margaret about that and its
22 reference in the very first page, the National

1 Academies of Science panel did not deliberate
2 on our report.
3 As a matter of fact, they got it
4 after the panel was disbanded. And so their
5 recommendations at the end of the chapter have
6 nothing to do with the content of our report.
7 In fact, there is no contradiction between
8 their conclusions and our report. There is no
9 contradiction in terms of what they say in
10 recommendation number one in terms of looking
11 and analyzing the user needs for SSA, and the
12 fact that that had already been done in our
13 report.
14 So it was a timing issue, but the
15 way it's reflected in Chapter 8 is it almost
16 seems like our report having been referenced
17 or cited in the first page, that it became a
18 filter for the rest of the chapter when it was
19 not the case. It was something they added
20 later on to try to make it as complete as
21 possible.
22 And so when I talked to Margaret

1 about the potential of making a clarification
2 in Chapter 8 about that, as she was willing to
3 make a clarification about Deb's research back
4 when she was with IOTF and the fact that it
5 wasn't testing the O*NET D concept, it never
6 got that far way back then, they are so far
7 along in their process with the National
8 Academies of Science in terms of the
9 publication of the final report that they
10 cannot make that clarification.
11 And so I indicated to her that that
12 would probably be a clarification that would
13 be included in our report back to the
14 Commissioner, because I think it's a very
15 important one. Particularly, we are very
16 sensitive in this panel to how people read
17 flat documents in context of time with what we
18 experienced in January, some people going to
19 subcommittee reports that don't reflect the
20 final recommendations that appeared in our
21 final report to the Commissioner.
22 So I wanted to -- I think we got a

1 lot of information that we potentially have
2 the need -- more than just the few minutes we
3 have allocated for this meeting before we end
4 or adjourn for the day to really discuss. And
5 so I wanted to see if maybe we could talk
6 about the implications of what we learned for
7 a couple of things that we've talked about
8 over the last day and a half and the agenda.
9 National Academy of Science
10 roundtable, the OIS-1 study, but I think it
11 merits a lot more discussion than we have time
12 for. And so I would propose that we consider
13 doing a teleconference at some point in the
14 next few weeks to address the broader issue in
15 terms of the takeaways and how this might
16 affect our advice and recommendations back to
17 SSA.
18 So let me open it up in terms of
19 the implications to the couple of things that
20 we have been talking about the last couple of
21 days. First, the National Academy of Science
22 roundtable, meaning not just dealing with the

1 O*NET issues, but we had discussed yesterday
2 about the DOT issues, you know, the
3 implications of this report overall, not just
4 Chapter 8, and the implications of the Miller
5 study from 1980 in terms of the overall design
6 and recommendation issues.
7 Any thoughts about any changes, of
8 whether we need to have that, how we need to
9 have it?
10 MEMBER WILSON: Just a point of --
11 are we still in a public meeting? I notice
12 our name tags are gone.
13 (Laughter.)
14 CHAIR BARROS-BAILEY: I think the
15 staff is just being a lot more efficient, but
16 I think I know who you are. So, yes, we are
17 in the public meeting.
18 Okay. Let me -- Sylvia, go ahead.
19 MEMBER KARMAN: Well, one thing is
20 is that it -- as we are anticipating the
21 National Academies of Science's final report
22 at the end of April, depending on when that

1 report -- final report comes out, we may want
2 to adjust the timing that we were thinking
3 about for the National Academies of Science
4 subject matter, at least roundtable.
5 So that may -- that just might be
6 something that we may want to tackle, because
7 we did talk about that yesterday in terms of
8 possibly having that in June. All things
9 being equal, that might be a good idea, but
10 then again, on the other hand, if we don't
11 receive the report until, you know, the end of
12 April, possibly even May, we certainly want to
13 have enough time for all of the people we
14 would invite to that panel, as well as
15 ourselves, to have time to read it and really
16 reflect on it.
17 So, I don't know, I am just putting
18 that out there. That's one thing.
19 MEMBER WILSON: I agree. I think
20 there is no rush. I am not opposed to having
21 some sort of teleconference on -- to sort of
22 process some of the things that we heard here

1 today, but I think it's important to have the
2 report in hand, the final report, have read it
3 and digested it. You know, I saw a lot of
4 people taking lots of notes and stuff, so, you
5 know, I doubt that we will forget any of that.
6 So --
7 CHAIR BARROS-BAILEY: Okay. Thank
8 you. And Allan?
9 MEMBER HUNT: I was just going to
10 point out that the final report is not going
11 to be materially different from what we've
12 seen, because obviously their process
13 prohibits that. So --
14 CHAIR BARROS-BAILEY: Okay. So
15 what I'm hearing and seeing around the table
16 is that the roundtable concept is on the
17 table, very much so, moving forward. And
18 there might be some variation in terms of what
19 we had put the timeline to be within the road
20 map that we discussed yesterday.
21 Shanan?
22 MEMBER GIBSON: I was going to say

1 one thing we might consider, though, is based
2 on the responses here, and our understanding
3 of how the panel operates, I think we should
4 probably, as part of this teleconference,
5 discuss our expectations for what we will
6 achieve through this roundtable.
7 CHAIR BARROS-BAILEY: The Four
8 Square Document, excellent. Thank you.
9 MEMBER SCHRETLEN: Yes, that's -- I
10 was just going to say that it calls into
11 question in my mind, what is the purpose of
12 the roundtable? Do we need to visit that and
13 ask ourselves as a panel what -- what we --
14 what our goals -- what we want to accomplish.
15 CHAIR BARROS-BAILEY: Okay.
16 MEMBER KARMAN: I guess we should
17 definitely consider that over the next few
18 weeks. And then, when we meet again, we
19 should, you know, talk -- discuss it and just,
20 like you said, revisit the purpose, given the
21 responses we had.
22 I do know that we have many more

1 questions, but you're right, I mean, it may
2 not -- it may not --
3 MEMBER SCHRETLEN: It raises in my
4 mind the question of might our time be better
5 served doing other things than a roundtable,
6 like spending time talking about how to
7 respond to this, or how this panel might
8 advise SSA to respond.
9 MEMBER GIBSON: I would concur with
10 that, and I would just say, though, I do want
11 to -- that we mentioned the fact that the NAS
12 roundtable will also be taking a secondary
13 look at the original report, not just this
14 report. So there does still leave that one
15 particular issue on the table.
16 CHAIR BARROS-BAILEY: And I think
17 there were a lot of questions that were more
18 technically oriented, where there were members
19 of the National Academies of Science, O*NET,
20 and DOT roundtables that addressed more
21 technical aspects beyond obviously Chapter 8,
22 that might be beneficial in terms of the

1 research process.

2 You know, when we look at some of

3 the things that have been -- we have been

4 asked to provide advice and recommendations

5 on, in terms of data collection and field job

6 analysts, what they found with DOT and, you

7 know, 30 years ago why it was addressed or not

8 addressed, some of those scientists might have

9 some thoughts about that in this report, you

10 know, other methods for data collection, same

11 thing with sampling, some of the linkage

12 issues -- that might be helpful.

13 MEMBER SCHRETLEN: If they would

14 attend.

15 CHAIR BARROS-BAILEY: If they would

16 attend, absolutely.

17 Mark?

18 MEMBER WILSON: Yes. I think

19 that's the issue, and it's an excellent point.

20 In terms of what the roundtable would be, my

21 plans were always to recommend that it be very

22 similar in format to the one I attended that

1 Dave had organized, where we as a panel,
2 certainly those interested would formulate a
3 set of questions that the technical experts
4 would be asked to address. And that wouldn't
5 be the only thing, but that would be the start
6 of the discussion.
7 And I think the area that remains
8 unexplored, in terms of looking at various
9 recommendations in the NAS report, were some
10 of the issues that Shanan and I were -- you
11 know, can you tell us about the reviews? Can
12 you tell us who wrote this? There aren't that
13 many experts, and so, assuming that they would
14 come, the IO psychology panel members of NAS
15 and some people who were involved in the
16 original DOT report, are the obvious invites
17 to this.
18 But if they were not -- if
19 significant or all numbers -- or all of them
20 were not able to attend, then I think it would
21 potentially be something that we would have to
22 reexamine as to whether or not it was

1 valuable.

2 CHAIR BARROS-BAILEY: And maybe,

3 you know, beyond the panel members, I remember

4 reading Handel and his comment in terms of job

5 complexity. There might be other aspects of

6 other people who presented that might `not

7 necessarily have been on the panel who might

8 be helpful to have as part of that process.

9 But so what I'm hearing is that we

10 want to keep the NAS roundtable concept on the

11 table, be a lot more specific in terms of what

12 the Four Square Document would include, what's

13 the purpose, and what we would learn from it

14 in terms of cost-benefit, time analysis, and

15 also timing.

16 Okay. Mark.

17 MEMBER WILSON: Well, and maybe one

18 way to get at the issue that David raised, and

19 also your initial comments about, you know, do

20 we need a teleconference to discuss the

21 process, you know, I would be very interested

22 and would invite, as we did in terms of the

1 Research Committee and reading the NAS report,
2 what questions the various panel members have
3 and, you know, that is kind of a moot point
4 now, but I would certainly be interested in,
5 well, were we able to assemble an august body
6 of work analysis experts who are expert, what
7 questions would you want to ask them? What
8 issues should they address that were similar
9 to the kinds of questions that, you know,
10 David was asking his people?
11 MEMBER KARMAN: I appreciate that,
12 because I am thinking that as we formulate the
13 questions or purpose around what we might want
14 to do in terms of a roundtable, and then ask
15 ourselves, gee, you know, is there perhaps a
16 better way for us to attain these answers to
17 these questions than doing that? You know,
18 perhaps there is some other method or
19 approach.
20 Because, you know, to the extent
21 that we would be asking additional questions
22 and maybe -- specifically, with regard to that

1 particular report, in its final form or pre-
2 publication, is for us as a panel to be able
3 to reconcile for Social Security the
4 recommendation that, well, there is this
5 modification notion on the table with regard
6 to O*NET, and its use -- possible use for
7 Social Security, which Social Security has
8 looked at.
9 And also, the recommendations in
10 the report itself that really get at the data
11 quality issues, and how can we deal with that
12 as a panel moving forward and making
13 recommendations to Social Security about the
14 development of its occupational information
15 systems.
16 And it may be, as David pointed
17 out, and, Mark, you also seconded it, that
18 maybe there are better ways of getting at
19 that.
20 MEMBER SCHRETLEN: And I just think
21 it might be very useful for all of us to think
22 about what we might do, in a sense kind of

1 preemptively, or prospectively, and do we want
2 to wait until the Department of Labor reaches
3 out and makes some overture, or do we want to
4 anticipate that with something and say, in
5 case you are thinking about reaching out and
6 making some overture --
7 (Laughter.)
8 -- here are some preliminary
9 thoughts, before you decide whether or not you
10 might want to form some kind of interagency.
11 Just to make it clear what their -- how steep
12 the mountain is.
13 MEMBER KARMAN: In fact, I am kind
14 of glad you mentioned that, because one of the
15 things that has come to mind is that in the
16 discussion that we had earlier, David, when
17 you had raised the issue of the bars, for
18 example, the behaviorally-anchored ratings,
19 and Tom Plewes had suggested that, well, you
20 know, these are things that could be studied,
21 you know, perhaps a comparison of the current
22 anchors with things that may or -- may be more

1 useful to Social Security, or measures that
2 may be more useful.
3 I am thinking that that may be
4 something that could be readily integrated,
5 that kind of a study may be a point that may
6 be readily integrated into the OIS design
7 study, may give us some traction on that issue
8 early on, at least to take a look at that, and
9 be in a position to say to the Department of
10 Labor, or whomever, "Well, you know, we
11 actually did take a look at that and here is
12 what we found."
13 MEMBER SCHRETLEN: So we could
14 conceivably respond to that, both rationally
15 and empirically.
16 MEMBER KARMAN: Yes, sir.
17 CHAIR BARROS-BAILEY: With
18 something that is happening right now. So, I
19 mean, what kind of became evident from the
20 discussion this morning is that we are
21 delivering on -- what has happened
22 chronologically is beyond -- is happening

1 beyond what the recommendations imply. I
2 mean, they implied something that is static in
3 time for them in August of last year.
4 And we are -- we are, what, about
5 seven months beyond that, and so, you know,
6 they even mentioned in their -- I think it was
7 Tom who said, "We anticipated you." And "you"
8 meaning the recommendations that we had and
9 the information that we had in our report. So
10 I think it's kind of a timing issue.
11 Okay. So we've talked about the
12 roundtable. We have talked about the
13 implications for study. We have talked about
14 a teleconference. I am going to ask Debra
15 Tidwell-Peters to scan for dates for a
16 teleconference for us to maybe process this
17 particular topic further.
18 Anything else in terms of specific
19 to this topic that we need to discuss at this
20 point?
21 (No response.)
22 Okay. Then, I am going to take us

1 through the rest of the agenda, so we can
2 finish on a timely basis today.
3 Okay. We have a couple of things
4 to include on the agenda, approval of minutes.
5 Elena e-mailed us all, and we got copies of
6 the minutes earlier this week. I would
7 entertain a motion to approve the minutes.
8 MEMBER GIBSON: So moved.
9 CHAIR BARROS-BAILEY: Shanan moved.
10 Do I have a second?
11 MEMBER WILSON: Second.
12 CHAIR BARROS-BAILEY: Mark seconded
13 the approval of the minutes. Is there any
14 discussion?
15 MEMBER HARDY: Yesterday I gave
16 some corrections to Debra Tidwell-Peters.
17 They were purely spelling and editing things,
18 and I believe that these minutes would be with
19 those corrections. I just wanted to put that
20 on the record.
21 CHAIR BARROS-BAILEY: Okay. So
22 there were some typographical kinds of

1 corrections. And I'm assuming what will go up
2 on the website will be the corrected minutes.
3 Any other discussion?
4 (No response.)
5 All those in favor?
6 (Chorus of ayes.)
7 Okay. Opposed?
8 (No response.)
9 That was unanimous. The minutes
10 have been approved.
11 Let's open up very quickly the
12 discussion for the agenda for June. If we
13 looked at our road map, there is probably a
14 lot that is going to be going on. I know that
15 there is going to be a lot going on between
16 now and June in terms of the public feedback
17 period from many different ways, probably the
18 electronic collection of the information, the
19 review of that information.
20 A lot of us are going to be on the
21 road quite a bit over the next few months, and
22 so we -- that is probably going to be a big

1 area that we are going to be reviewing in
2 terms of the public feedback. We are going to
3 be having probably a lot of organizations
4 providing us feedback in terms of the report,
5 so I anticipate that is going to be a big
6 area.
7 I think there are going to be a
8 couple of technical reports that may be
9 offered at that time, so we will probably have
10 presentations around those. I'm assuming
11 research in terms of maybe some of what we're
12 going to be talking about with the NAS at the
13 teleconference we may need to include in
14 there.
15 Any other thoughts? Allan?
16 MEMBER HUNT: Labor market.
17 CHAIR BARROS-BAILEY: Labor market,
18 yes, absolutely, the roundtable. That is
19 going to be a big one that we will need to
20 talk about in terms of consideration for the
21 agenda.
22 Deborah?

1 MEMBER LECHNER: I think we
2 probably would have a report -- some sort of
3 report on the recommendations for the job
4 training and certification of job analysts --
5 CHAIR BARROS-BAILEY: Yes.
6 MEMBER LECHNER: -- at that point.
7 CHAIR BARROS-BAILEY: There is
8 probably going to be quite a bit happening in
9 the next few months on that as well, yes.
10 Tom?
11 MEMBER HARDY: You are looking at
12 possibly having a draft content model by May
13 from the workgroup? Are we going to be
14 looking at that, do you think, or will that
15 still not be quite ready?
16 MEMBER KARMAN: Well, it certainly
17 is on track for us to be working with the
18 workgroup to finish our considerations around
19 the person-side elements for the content
20 model. So I am not sure whether or not we
21 will have something to share with the entire
22 panel in June, but that's where we're headed,

1 anyway, as far as drafts are concerned.

2 CHAIR BARROS-BAILEY: I think from

3 an administrative standpoint I got a lot out

4 of the training, the professional development,

5 and I want to thank you again for doing that,

6 Mark and Shanan. And so we will be looking at

7 and might also kind of scan for other areas

8 that people would really want to see

9 additional training about.

10 I know we talked about the legal

11 issues, in terms of defensibility, and, you

12 know, is June a good timing, is there a lot

13 going on in June, might we do it another time.

14 So we will probably scan for that as well in

15 terms of professional development.

16 Okay. Any other considerations for

17 the agenda for June?

18 (No response.)

19 Hearing none, I would entertain a

20 motion to adjourn our second annual quarterly

21 meeting for the OIDAP.

22 MEMBER HARDY: I make a motion to

1 adjourn.

2 CHAIR BARROS-BAILEY: So moved by

3 Tom. Seconded by Allan?

4 MEMBER HUNT: Yes, I second the

5 motion.

6 CHAIR BARROS-BAILEY: All those in

7 favor?

8 (Chorus of ayes.)

9 I'll note that was unanimous, and

10 we are adjourned.

11 Thank you.

12 (Whereupon, at 11:34 a.m., the proceedings in

13 the foregoing matter were

14 adjourned.)

15

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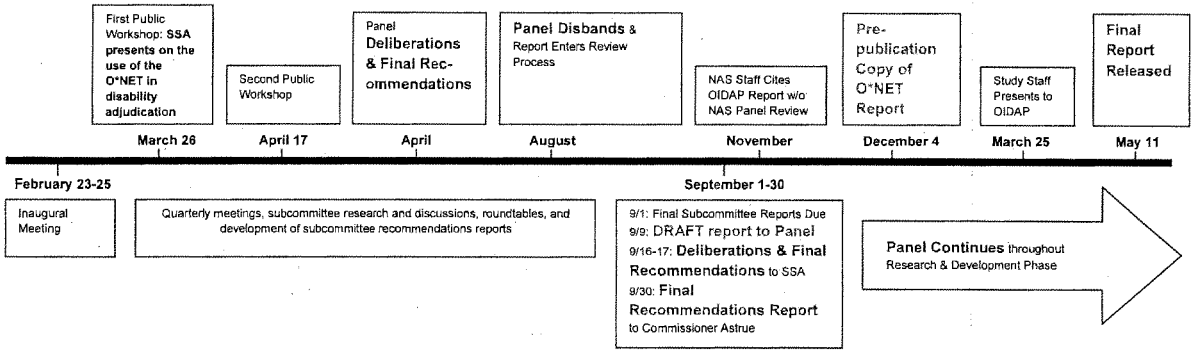
TAB C

Appendix C: Timeline of NAS O*NET Panel and OIDAP Activities

(February 2009 through May 2010)

NAS O*NET Panel Activities



OIDAP Activities

FIGURE NOTES

NAS timeline from panel's final recommendations to release of pre-publication and then final report: 13 months (April 2009 → May 2010)

OIDAP timeline between subcommittee recommendations, report draft, deliberations, final recommendations, and final report: 1 month (September 1 -30, 2009)

- ✓ Different processes, different timelines
- ✓ NAS recommendations made in absence of OIDAP research and recommendations
- ✓ OIDAP recommendations complement and refine NAS recommendations on SSA occupational information needs and the usefulness of O*NET in disability adjudication

TAB D

ECONOMETRIC V. ERGOMETRIC WORK ANALYSIS DESIGNS

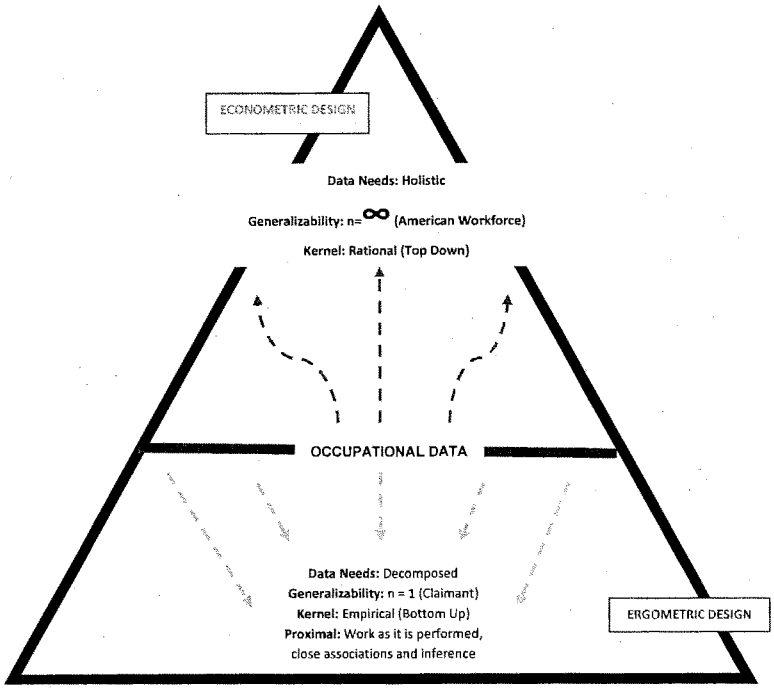


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Table 1

Comparison of Ergometric and Econometric Approaches to Work Analysis

Element	Ergometric	Econometric
Definition	Measurement of work as performed by the worker	Measurement of work as a labor market category
Primary Scales of Measurement	Ordinal, Interval & Ratio	Nominal
Measurement Approach	Decomposed	Holistic
Measurement Precision	Moderate to High	Low
Unit of Analysis	Position & Job	Large Aggregations of Jobs
Primary Purpose/Application	Human Resources	Policy Development
Organizational Level	The Enterprise	The Economy
Primary Threats to Validity	Internal & SCV	External & Construct
Level of Legal Scrutiny	Moderate to High	Low
Sample Systems	Task Inventory & PAQ	O*NET & SOC
Primary Discipline	Psychology	Economics

Note. SCV = statistical conclusion validity; PAQ = position analysis questionnaire; O*NET = Occupational Network; SOC = Standard Occupational Classification

Panel Contact Information

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Anyone requiring materials in alternative formats or further information regarding this document or the Occupational Information Development Advisory Panel should contact the Panel staff. Records are maintained of all Panel proceedings in accordance with the Federal Advisory Committee Act and are available for public inspection at the Panel office, by appointment.

Occupational Information Development Advisory Panel

http://www.socialsecurity.gov/oidap/

SSA RESPONSE TO RECOMMENDATIONS
Social Security Disability Programs:
Improving the Quality of Benefit Award Decisions
Minority Staff Report
Permanent Subcommittee on Investigations
United States Senate
September 13, 2012

(1) **Recommendation: Require Government Representative at ALJ Hearings.** To ensure key evidence and issues are properly presented, reduce instances in which SSA ALJs overlook evidence indicating a claimant is not disabled, and increase consistency and accountability in ALJ decision-making, a representative of the agency should participate in all ALJ disability hearings and decisions. Including a government representative at the ALJ Level has long been a recommendation of both the Association of Administrative Law Judges and the Social Security Advisory Board. Congress should specifically designate funds for such a program.

Response: During the 1980s, we tried to pilot an agency representative position at select hearing offices. In August 1982, we published regulations establishing the Social Security Administration Representation Project following extensive consultation with Congress. See 47 Fed. Reg. 36, 117 (August 19, 1982). The regulations called for an agency representative to review disability cases before a hearing in select offices, and, if necessary, initiate development of further evidence. The regulations also called for the agency representative to present the agency's view at disability hearings if the claimant had representation. The purpose of the pilot was to: 1) help improve the overall disability adjudicatory process; 2) reduce delays in conducting hearings and issuing hearing decisions; 3) improve the quality of hearing decisions; 4) increase the productivity of ALJs; 5) achieve more uniformity and consistency in hearing decisions; and 6) reduce hearing costs. While Congress originally supported the project, we received significant congressional opposition once the pilot began. Additionally, a United States District Court enjoined the pilot, holding that the pilot violated the Social Security Act, intruded on ALJ independence, was contrary to congressional intent that the process be "fundamentally fair," and failed the constitutional requirements of due process. Salling v. Bowen, 641 F. Supp. 1046 (W.D. Va. 1986). Due to congressional opposition, general fiscal constraints, and the District Court injunction, we discontinued the pilot.

While different in role and scope from a government representative, we have a number of new and expanded initiatives that are focused on improving the accuracy, speed, and fairness of ALJ decisions such as holding more video hearings, implementing business process improvements such as the Electronic Business Process, piloting IT improvements such as the Electronic Bench Book and the Availability and Scheduling Application, and establishing ALJ productivity expectations.

We rethought our regulations to expand the Senior Attorney Adjudicator program, which allows our most experienced hearing office attorneys to make on-the-record decisions in disability cases where enough evidence exists to issue a fully favorable decision without the need for a hearing.

Permanent Subcommittee on Investigations
EXHIBIT #24

To help our most backlogged offices, in 2007, we opened five National Hearing Centers (NHC) around the country. We designed the NHCs to utilize electronic hearing files and conduct only video hearings. The ALJs in the NHCs hear cases from offices throughout the country with the heaviest workloads. We expanded this concept in 2010 with the creation of a National Case Assistance Center, which is staffed by decision-writers and support staff who assist the most overburdened hearing offices in preparing cases for hearings and writing decisions for ALJs.

We implemented several IT improvements that have helped increase both our efficiency and the accuracy of our decisions. First, we increased usage of the Findings Integrated Templates (FIT), a formatting tool that improves the legal sufficiency of hearing decisions, conserves resources, and reduces average processing time. We introduced a standard electronic Hearing Office process to promote consistency in case processing across all hearing offices. We also built the "How MI Doing" tool that allows ALJs and support staff to view a graphical presentation of their individual productivity as compared to others in their office, their region, and the Nation. We are also developing training modules on recurring issues that eventually will be linked to this tool, allowing ALJs to access to training on targeted topics.

We are developing another automated tool, the electronic bench book (eBB) that aids in documenting, analyzing, and adjudicating disability cases in accordance with our regulations. The eBB will allow ALJs to review and decide cases, or provide instructions to decision-writers, in a fully electronic environment.

An important step in improving the accuracy and fairness of our decisions was the recent creation of the Division of Quality (DQ) in our Office of Appellate Operations. The DQ conducts post- effectuation reviews on specific hearing offices, ALJs, representatives, doctors, and disability issues. The DQ also samples ALJ decisions prior to effectuation. These reviews allow us to better understand how our disability policies are being implemented throughout the hearings level. We use these reviews to identify common errors in ALJ decisions, allowing us to focus resources and training on those areas. Using the data we collected, we recently provided mandatory training to all ALJs on residual functional capacity and evaluation of medical source opinions.

(2) **Recommendation: Strengthen Quality Review Process.** The new ALJ review process initiated by the Quality Division of the Office of Appellate Operations should be expanded and strengthened by conducting more reviews during the year and developing metrics to measure the quality of disability decisions. Such information should be made available to Congress.

Response: We agree. For many years, the Appeals Council was not adequately funded to perform its oversight responsibilities. In 2007, when we committed to reducing the hearings backlog, I did not want to sacrifice quality in the process. Therefore, we provided resources for the Appeals Council to implement quality assurance initiatives and improve ALJ training. Our first step was to collect meaningful data that are the foundation of our reviews. We then created the Division of Quality in the Appeals Council that began quality reviews in September 2010. We continue to increase the number of quality reviews we conduct. In

fiscal year (FY) 2012, we reviewed a random sample of about 7,000 hearing decisions, which is up from nearly 3,700 reviews in FY 2011.

The Administrative Conference of the United States is currently studying the Appeals Council's case review role. This study will consider issues such as expansion of the Appeals Council's existing authority to conduct reviews of ALJ decisions. We expect its recommendations by the end of the calendar year, and look forward to discussing possible initiatives at that time.

(3) **Recommendation: Close the Evidentiary Record.** To eliminate the confusion, inefficiencies, and abuses associated with the current practice of allowing medical evidence to be submitted at any point in a disability case, the evidentiary record should close one week prior to an ALJ hearing, with exceptions allowed only for significant new evidence for which exclusion would be contrary to the public interest.

Response: A closed record would provide the ALJ with all the necessary information to fully consider the claim prior to the hearing, and the ALJ would have the necessary information to adequately question the claimant or witnesses at the hearing. Furthermore, a significant number of ALJ decisions are remanded because new and material evidence (i.e., relevant to the time adjudicated by the ALJ, not previously considered, and may change the outcome) available at the time of the ALJ decision is submitted after the ALJ issues a decision. Some have argued that closing the record at the time of the ALJ's decision would encourage claimants to develop and present such evidence in time for the hearing (where possible), leading to a timelier and lower-cost resolution of the claim.

The main reason to leave the record open at the hearing level is procedural. Should a claimant's condition worsen or a new condition arise, there are fewer administrative steps if the ALJ record remains open. For example, the claimant would not have to file a new application if a new condition arose the day after the hearing but before the decision was issued, assuming the ALJ became aware of the condition.

The same protections afforded under the current process can be incorporated into a closed record provision, like the provision our Boston Region hearing offices use. In the Boston Region (as noted in 20 CFR 405.331), absent certain criteria, evidence must be submitted no later than five business days before the date of the scheduled hearing. However, to protect claimants, the rules do allow for the acceptance of evidence after this time period if our action misled the claimant, the person had a limitation that prevented submission of the evidence earlier, or some other unusual, unexpected, or unavoidable circumstance beyond the claimant's control prevented submission of the evidence. This provision encourages the timely submission of evidence while still allowing for the late receipt of evidence in appropriate circumstances. We are continuing to evaluate use of these procedures in the Boston Region.

(4) **Recommendation: Strengthen Use of Medical Listings.** SSA should provide additional training to ALJs on the use of SSA Medical Listings, and direct ALJ decisions to identify how a claimant meets each required element of a listing, citing objective medical evidence and not just conclusory statements by an expert.

Response: We agree, and believe that we have been making significant progress in this area in the years after the dates of the cases that the Committee reviewed. One of the common errors found in our post-effectuation reviews of ALJ decisions is lack of supporting rationale. We used this information to provide feedback on policy guidance and litigation issues specifically related to medical evidence. We also used this information to develop and implement ALJ training to address the application of the medical Listings, including when a finding of disability can be made at the Listing level. Our improved automation tools guide adjudicators through each step of the sequential evaluation, including the Listings. When findings are made at the Listing level, these tools prompt adjudicators to articulate the required elements of the Listing and to cite to the relevant objective medical evidence.

(5) **Recommendation: Expedite Updated Job List.** SSA should move more quickly to ensure the Occupational Information System can serve as a usable replacement for the Dictionary of Occupational Titles to identify jobs that claimants with limited disabilities can perform in the national economy.

Response: We recently began a new phase in the development of an Occupational Information System (OIS), which we expect to be significantly less expensive than our original estimate. While the Department of Labor's (DOL) replacement for the Dictionary of Occupational Titles (DOT), O*NET, lacks the vocational information we need to make disability determinations, we are working with DOL to collect new data for occupations at the detailed occupational level. In July 2012, we signed an interagency agreement with the Bureau of Labor Statistics (BLS) to collect information about occupations that would add details to the OIS and address our needs. In FY 2013, BLS will test the feasibility of using the National Compensation Survey platform as a means to gather the occupational data we need. We hope to have initial results of the testing by the end of FY 2013.

(6) **Recommendation: Focused Training for ALJs.** The Office of Appellate Operations, Quality Division, should provide training to all ALJs regarding adequate articulation in opinions of determinations that involve both obesity and drug and alcohol abuse. This training should emphasize the proper way to analyze and address these issues as required by law, regulation and agency guidance.

Response: We agree. We conduct post-effectuation reviews to identify common errors in ALJ decisions. The results of these reviews show common errors include the failure to adequately develop the record, lack of supporting rationale, and improper evaluation of opinion evidence. We use this information to develop and implement focused mandatory training for our ALJs and to provide feedback on policy guidance and litigation issues relating to obesity and drug and alcohol abuse.

(7) **Recommendation: Strengthen Consultative Examinations.** Because many disability claimants do not have sufficient funds to obtain detailed medical evidence of their conditions, SSA should determine, with input from ALJs, how to improve the usefulness of agency-funded Consultative Examinations (CEs), including by requiring an explanation of any significant disparity between the CE's analysis and other evidence in the case file.

Response: We agree that proper CEs are an important element in disability evaluation, and we have detailed rules and procedures that govern our CE process. We work closely with our State disability determination services to ensure the quality of the CE providers and their reports. In September 2012, we updated the Adult CE Report Content Guidelines and the Pediatric CE Report Content Guidelines, which are located on our website at, http://www.socialsecurity.gov/disability/professionals/greenbook/index.htm. CE providers can use this website to help ensure their reports meet our guidelines.

We are completing an analysis of 300 initial and ALJ cases that will help us assess the usefulness of CEs. This exploratory study will look at whether CEs are being requested and conducted in compliance with our regulations and will also assess the factors that contribute to quality. Given the small sample size, the report will provide us with a rough assessment of CE quality. This study will help us determine if we need to further examine specific issues. The final report will be available by the end of the year.

(8) Recommendation: Reform the Medical-Vocational Guidelines. The medical-vocational guidelines should be reviewed to determine if reforms are needed. Additional study should be conducted to evaluate whether the current guidelines utilize the proper factors and if they appropriately reflect a person's ability to work.

Response: The medical-vocational rules found in our regulations are rooted in the statutory definition of disability and its requirement that we consider age, education, and work experience in conjunction with residual functional capacity.

The medical-vocational rules have been criticized for being incomplete or not reflective of a person's ability to adjust to other work, and we continue to evaluate research and data that could inform discussions of potential changes to the medical-vocational rules. For example we have asked the Disability Research Consortium to evaluate how age, education, and previous work history affect a person's ability to work, independent of the effects of deteriorating health and impairment caused by medical conditions. We are interested in the correlation between specific age ranges, education categories, and work skills and success in adapting to new work at the sedentary, light, medium, and heavy work levels.

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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

October 31, 2012

VIA U.S. MAIL & EMAIL (Suzanne.Payne@SSA.gov)

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NOTE: As of August 2013 when this hearing record went to press, responses to the Supplemental Questions to the Record submitted to the Social Security Administration were still pending. Responses will be made a part of the Subcommittee hearing exhibit files when they are received and will available for review at the Subcommittee offices.

Dear Judge Jonas and Judge Bice:

The Permanent Subcommittee on Investigations would like to thank you for appearing before the Subcommittee at the hearing, *Social Security Disability Programs: Improving the Quality of Benefit Award Decisions. Fraud: Case Studies in Federal Employees and Commercial Drivers Licenses.* I appreciated your hearing testimony.

Attached are follow-up questions which, along with your responses, may be included in the hearing record. The responses should be submitted to the Subcommittee by Monday, November 26, 2012. Please email responses to Mary Robertson, Chief Clerk, Permanent Subcommittee on Investigations, at mary_robertson@hsgac.senate.gov.

Thank you for your assistance in this matter. The Subcommittee will be sending you a copy of the final hearing record when it becomes available. If you or your staff have any questions or would like additional information, please contact Andrew Dockham at 202/224-2224.

Sincerely,

Tom Coburn, M.D.
Ranking Minority Member
Permanent Subcommittee on Investigations

Attachment

Permanent Subcommittee on Investigations
EXHIBIT #25

SUPPLEMENTAL QUESTIONS FOR THE RECORD
FROM
SENATOR TOM A. COBURN, M.D.
Ranking Member
Permanent Subcommittee on Investigations
to

JUDGE PATRICIA A. JONAS
Executive Director of Appellate Operations
Deputy Chair, Appeals Council
Office of Disability Adjudication and Review
Social Security Administration

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
HEARING ON

Social Security Disability Programs:
Improving the Quality of Benefit Award Decisions

September 13, 2012

Please provide answers to the following questions by November 26, 2012:

1. Please describe the recent review by the Office of Appellate Operations, Division of Quality of unappealed favorable decisions made by Administrative Law Judges, including, but not limited to, the circumstances that led to the review.

2. The review found that hearing offices decided cases at Step 5 versus Step 3 at about a 4 to 1 rate. Please explain why ALJs are finding such a higher number of claimants disabled based their ability to perform any job in the national economy, including any documentation of internal reviews by the agency regarding ALJ decisions made at Step 5.

3. You stated the Social Security Appeals Council (SSAC) is providing educational training on certain issues that appear problematic to ALJs based on its review. Please describe those trainings and provide any materials used during those training. If the trainings were recorded, please provide those recordings.

4. Please explain how the agency believes conflicting medical evidence should be addressed by DDS decision-makers and ALJs. Include in your response any documented guidance the agency has provided to decision-makers at DDS and ALJs regarding the consideration of conflicting medical evidence, including, but not limited to training materials, general directives, or any study or review of the consideration of medical evidence by DDS decision-makers or ALJs.

5. Please provide the number of decisions by Judge Howard O'Bryan the SSAC remanded each year for the past 10 years. Please also include any documentation of the reason for the remand.

6. Please provide the number of decisions by the ALJs or Senior Attorney Adjudicator in the following offices the SSAC remanded each year for the past 10 years: Oklahoma City, Oklahoma; Roanoke, Virginia; and Montgomery, Alabama. Please also include any explanation of the reason for the remand.

7. Please provide any agency analysis regarding updating or replacing the Dictionary of Occupational Titles, including, but not limited to development of the Occupational Information System (OIS), any report or analysis performed by the Occupational Information Development Advisory Panel (OIDAP), and documents related to the agreement between SSA and the Bureau of Labor and Statistics (BLS).

8. Please explain and provide any supporting documentation as to why the Department of Labor's Occupational Information Network (O*NET) cannot be used by SSA for purposes of disability claims, if not permanently, then temporarily until OIS is ready.

9. For the past five years, please provide the annual number of claims appealed to the SSAC where the claimant, or the claimant's representative, submitted new evidence to be considered by the SSAC on appeal.

10. For the past five years, please provide the number of cases remanded to ALJs based on new evidence submitted to the SSAC.

11. SSA currently has a backlog of Continuing Disability Reviews (CDRs), which determine if a beneficiary has experienced medical improvement and no longer qualifies for disability benefits. Please explain how the agency determines if an individual has medically improved when the disabling condition is unclear when approved for benefits. Specifically, explain how the agency determines medical improvement for the following Oklahoma cases: 111; 134; 144; and 146. If CDRs were performed on these claimants, please provide information regarding the CDR, including, but not limited to whether it was a medical or work-related CDR. If the CDR was related to the claimant's medical condition, provide whether the CDR was a mailer or a full medical CDR.

12. Please provide any documentation of agency analysis, reviews, or other documentation regarding agency decisions on the decision to allocate resources to CDRs.

13. Innovators in the Oklahoma Department of Rehabilitation Services, such as Program Manager Jason Price, are helping SSDI beneficiaries reach their potential in the workforce, despite their disabilities. Through innovative state efforts, Oklahoma helped 92 severely disabled clients find work and leave the SSDI program last year. As a result, these individuals – which SSA has determined to be unable to engage in substantial gainful activity – are better able to realize their full potential in life and, as an added benefit, the state recouped nearly $1.7 million in reimbursements last year.

a. What changes to Ticket-to-Work or other back to work programs are the agency currently considering?

b. For cases *DENIED* at an ALJ hearing where vocational experts are utilized, are denials referred to the state vocational rehabilitation system or other similar entities that can provide appropriate employment and work support to these individuals?

c. Prior to 1999, denied disability claimants were referred to state vocational rehabilitation – as were *all applicants* to the DI program. Please explain why the agency changed this policy and provide any documented analysis or review of this policy change.

d. Please explain whether policy either prohibits or discourages referrals to state vocational rehabilitation programs. If so, please provide the Subcommittee with a copy of such guidance.

e. When rendering a determination in a case, are vocational experts and/or ALJs *required* to take into account the availability of Assistive Technology that can help an individual with a disability enter and persist in the workforce? If no, why not and does SSA support a change to this policy?

f. The Social Security Act and regulations require that a person comply with any "treatment" prescribed by his or her treating physician if such treatment would result in the person being able to work. Is assistive technology considered by SSA to be a "treatment"?

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SUPPLEMENTAL QUESTIONS FOR THE RECORD
FROM
SENATOR TOM A. COBURN, M.D.
Ranking Member
Permanent Subcommittee on Investigations
to

JUDGE DEBRA BICE
Chief Administrative Law Judge
Office of Disability Adjudication and Review
Social Security Administration

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
HEARING ON

Social Security Disability Programs:
Improving the Quality of Benefit Award Decisions

September 13, 2012

Please provide answers to the following questions by November 26, 2012:

1. Hearing Office Chief Administrative Law Judge for Oklahoma City Doug Stults told the Subcommittee that when the agency moved to electronic case files, the agency encouraged ALJs to electronically paste portions of a claimant's medical records into disability opinions. Please explain whether the agency encouraged this practice and provide any training materials, general guidance, or internal studies or reviews regarding ALJs electronically pasting medical evidence directly into opinions.

2. In more recent opinions issued by Judge O'Bryan reviewed by the Subcommittee, Judge O'Bryan continued to electronically paste portions of the medical records into his decisions and used "etc., etc., etc." to describe a claimant's medical condition. Please explain the steps taken to correct these actions by Judge O'Bryan and include any documentation of such actions.

3. Judge Howard O'Bryan told the Subcommittee in an interview he was asked by the agency to review and potentially decide hundreds of disability cases from around the country from 2007-2009. Please explain why Judge O'Bryan was asked to review and decide so many cases and provide any agency documentation regarding the decision to send Judge O'Bryan cases from outside the Oklahoma City jurisdiction.

4. From 2007 to the present, please provide the number of cases sent to Judge O'Bryan from outside the Oklahoma City Hearing Office jurisdiction, the number of opinions issued by Judge O'Bryan, and summary statistics of the outcomes for each year, including, but not limited to, the number of favorable, partially favorable, denied, and on-the-record decisions and the state the claimant was located.

5. The Subcommittee investigation found that a number of DDS decision-makers and ALJs would amend a claimant's disability onset date to the claimant's 50th or 55th birthday and approve then award disability benefits based on the medical-vocational guidelines. Please provide any agency guidance, general directives, or internal studies or reviews of this practice.

6. Please explain whether the agency supports closing the record as to evidence for disability claims at any point in the appellate process and specifically, prior to a hearing before an ALJ. Please provide any internal studies, reviews, or analyses the agency has generated regarding closing the record for disability claims at any point during the appellate process.

7. Please provide any agency studies, reviews, or analyses regarding disability claimants or claimant's representatives withholding or failing to submit evidence in support of a disability claim, including, but not limited to the failure to submit unfavorable evidence.

8. Hearing Office Chief Administrative Law Judge for Roanoke, Virginia Thomas Erwin told the Subcommittee in an interview that he was certain that some claimant representatives were withholding unfavorable portions of a claimant's medical records. Please describe what the agency is doing to prevent claimants and their representatives from withholding such evidence. Please include any training materials, agency guidance, or general directives distributed to ALJs on claimants or representatives withholding medical evidence.

9. During the Subcommittee investigation, agency officials repeatedly asserted that ALJs have qualified judicial independence, making it difficult to hold them accountable. Does the agency believe this independence contributed to the lack of quality in ALJ opinions identified by the Division of Quality Report finding 22 percent of ALJ cases contained errors? Aside from remands, please explain how the agency deters ALJs from abusing their independence.

10. You stated at the Subcommittee hearing that ALJs "should not abdicate their role as a judge." Further, in an interview with Subcommittee staff, you stated that you did not consider a hearing that lasted less than 10 minutes to be adequate. You also stated that a hearing where the claimant is not asked a single question is inadequate. Please further explain what you mean by telling judges they should not abdicate their role, as well as the types of actions by ALJs that indicate the ALJ may be abdicating their role as ALJ.

11. Recently, the agency made the decision to stop allowing ALJs to send claimants for a MMPI test, which would assist in determining if the claimant was malingering or had credibility issues. Please explain why the agency made this decision, and provide any analysis or report developed when making this decision. Please also explain how the agency determined it could prevent ALJs from requesting this examination when the ALJs have "qualified judicial independence."

12. In the absence of sending a claimant for MMPI, please explain what tools exist for an ALJ to examine a claimant's credibility. Please include any training materials, agency

guidance, and general directives provided to ALJs regarding assessing a claimant's credibility.

13. The agency recently advised ALJs they are not allowed to consider social media, such as Facebook, when analyzing a claimant's credibility. The agency asserts doing so potentially compromises the claimant's personally identifiable information (PII). Please explain how this is the case when the information is already in the public domain. Please also explain how the agency determined it could prevent ALJs from accessing this information when the ALJs have "qualified judicial independence."

14. In a number of decision reviewed by the Subcommittee, the ALJ awarded benefits by giving little to no explanation or weight to the decision made at the state DDS. Many times the ALJ would only state the following boilerplate language:

    The State agency medical opinions are given little weight because evidence received at the hearing level shows the claimant is more limited than determined by the State agency consultants. Furthermore, the State agency consultants did not adequately consider the claimant's subjective complaints or the combined effect of the claimant's impairments.

    Please explain if discounting the DDS decision with little to no explanation is adequate. If the agency has provided any materials to ALJs regarding to address the DDS decision, please include that information in your response.

15. In certain cases, ALJs held hearings lasting less than five minutes in which the claimant was not even asked a question regarding their condition. Please provide any documented guidance the agency has distributed or made available to ALJs with regard to how to conduct hearings. This should include, but is not limited, training materials, general directives, and any agency studies or reviews of ALJ hearing practices.

16. Many ALJs noted the pressure by the agency to decide a high number of cases. If an ALJ decided the minimum recommended 500 cases a year that is still more than one decision a day. At times, a case file, by the time it reaches the ALJ can exceed 500 pages of medical evidence. Please explain how the agency expects an ALJ to properly consider 500 pages of medical evidence in such a short period of time, as well as produce legally defensible opinions. Please provide any training materials, guidance, or general directives. Please also provide the documentation by the agency that communicated to the ALJS that each judge should decide between 500-700 cases per year.

17. In Alabama Case 64, Exhibit 1b is a consultative exam in which the claimant stated she "last worked in 1996...they let me go. I didn't look for work after that. I could've worked but I didn't." Please explain how an ALJ should consider a claimant that voluntarily stops working. Please include any training materials, agency guidance, or general directives distributed to DDS employees or ALJs.

18. In Alabama Case 64, the physician noted, in Exhibit 1b, the claimant "had a tendency to be evasive, contradictory, and to exaggerate. She did not appear to be a credible historian." The examining doctor also questioned the claimant's need for a cane, which she brought with her to the exam, but did not use. Please explain how an ALJ should deal with this particular information, as well as credibility or malingering issues in general. Please include any training materials, agency guidance, or general directives distributed to DDS employees or ALJs.

19. Oklahoma Case 109 also contained strong evidence of malingering, in that a claimant complained to an examining physician of right shoulder pain, but then appeared to have no problem with her shoulder outside the office in the parking lot. The same physician determined the claimant was "not permanently and totally disabled or in need of vocational rehabilitation" and "she may return to employment." The ALJ failed to address this evidence in the decision rendered. Please explain how the ALJ should have dealt with this information.

20. In Alabama Case 65, evidence existed the claimant was non-compliant with prescribed treatment, specifically a pharmacy print-out of medications indicated the claimant never filled certain prescriptions. Yet, the ALJ awarded benefits. Please explain the agency's rules or regulations regarding non-compliance, including whether a claimant should be awarded benefits when they fail to comply with prescribed treatment. Please also provide an explanation of whether the claimant's non-compliance in Alabama Case 65 would prevent a claimant from being awarded benefits, as it did when DDS reviewed the claim.

21. The ALJ held a hearing that lasted three minutes in which no question was asked of the claimant in Oklahoma Case 102. Do you consider this an adequate hearing? Please provide any training materials, agency guidance, or general directives distributed to ALJs regarding what constitutes an adequate hearing.

22. In certain cases reviewed by the Subcommittee, hearing transcripts indicated that ALJs were having substantive off-the-record conversations with claimants and their representatives. Please explain whether ALJs should have substantive conversations about a claimant's disability claim off-the-record, including any training materials, guidance, or general directives distributed to ALJs.

23. In Oklahoma Case 114, the Senior Attorney Adjudicator (SAA) electronically pasted a paragraph describing the claimant's condition written by the claimant's representative into the favorable opinion. *See* Exhibit 8g. The paragraph described a review done by the claimant's "treating rheumatologist." Yet, the case file indicated the claimant had only seen this physician one time. Please describe the evidentiary weight given to an opinion written by the claimant's treating physician, including whether a physician that a claimant has seen only once can be considered a treating physician.

24. Judge Peter Keltch appeared to coach a claimant about ways to maximize the benefit payment received each month from the agency in Oklahoma Case 151 and stated

    I'll tell you a little secret about that. If you go in, if you're approved and they say now where've you been living and if you say I've been having a free apartment, they say oh well we'll deduct a third off of your benefits because you didn't have any rent to pay. But if you go in and say I've been living with a friend and I'm going to pay him back, then they give you the full check. I mean it's between you and him to pay him back if he's been paying the rent and bills.

    See Exhibit 10. Please explain whether this was an appropriate statement for an ALJ to make to a claimant at a hearing. Please include any training materials, agency guidance, or general directives relating to ALJs discussing program rules with claimants at a hearing.

25. The Subcommittee reviewed cases where a claimant would apply for disability benefits based on a physical disability. When the claimant was denied by the DDS and retained a representative for their appeal to an ALJ, the claimant – at times – changed the basis of their claim to a mental disability. The ALJ then awarded benefits based solely on the mental disability allegations. Please explain how you believe an ALJ should deal with such a change in disability allegations. Please include any training materials, agency guidance, or general directives distributed to ALJs on this issue.

26. Please explain whether you believe the agency should increase the ages considered "approaching advanced age" and "advanced age" associated with the medical-vocational guidelines. Please also include an explanation as to why the agency attempted to increase the ages in the vocational grids in 2005, but later withdrew the proposed increase. *See* Age as a Factor in Evaluating Disability, 70 Fed. Reg. 67101 (Nov. 4, 2005) *compared to* Age as a Factor in Evaluating Disability, 74 Fed. Reg. 21563 (May 8, 2009).

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