



SOCIAL SECURITY ADMINISTRATION

Refer To: [REDACTED] 1

Office of Hearings and Appeals
Atlanta North Office
3105 Clairmont Road
Atlanta, GA 30329

Date: **OCT 25 2002**

M [REDACTED] L [REDACTED]
1509 Trotters Cove
Dunwoody, GA 30338

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 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

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 Hearings and Appeals, 5107 Leesburg Pike, Falls Church, VA 22041-3255. Please put the Social Security number shown above on any appeal you file.

See Next Page

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 regulations exists. Section 404.970 of the regulations 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.

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 770-934-1320. Its address is 100 Crescent Center Parkway, Suite 800, Tucker GA 30084.

Richard P. McCully
Administrative Law Judge

cc: Jonathan Ginsberg
Attorney at Law
P O Box 88956
Dunwoody, GA 30356

SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals

ORDER

IN THE CASE OF

M [REDACTED] M. L. [REDACTED]

(Claimant)

(Wage Earner)

CLAIM FOR

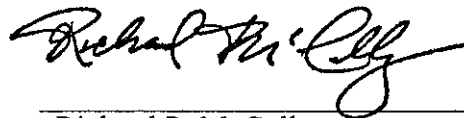
Period of Disability and
Disability Insurance Benefits

[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.



Richard P. McCully
Administrative Law Judge

OCT 25 2002

Date

**SOCIAL SECURITY ADMINISTRATION
Office of Hearings and Appeals**

DECISION

IN THE CASE OF

CLAIM FOR

M [REDACTED]

(Claimant)

Period of Disability and
Disability Insurance Benefits

(Wage Earner)

[REDACTED]

(Social Security Number)

JURISDICTIONAL STATEMENT

The instant case is before this Administrative Law Judge pursuant to a timely request for a hearing. The undersigned has carefully considered the documents in the record marked as exhibits, the testimony at the hearing, and the arguments presented.

ISSUES

The general issues are whether the claimant is entitled to a period of disability and disability insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act, as amended. The specific issues are whether the claimant is under a "disability" and, if so, when such "disability" commenced and the duration thereof; and whether the special earnings requirements of the Act are met for the purpose of entitlement to a period of disability and disability insurance benefits.

SYNOPSIS OF THE DECISION

Having carefully considered the evidence of record, the undersigned concludes that the claimant has been continuously disabled since May 26, 1998. This conclusion is based upon the determination that, considering the claimant's inability to perform work activity at any level of exertion eight hours per day, five days per week, on a regular and routine basis, there are no jobs in the national economy that the claimant can perform.

VOCATIONAL PROFILE

The claimant was born on November 23, 1946, and was 51 years of age on May 26, 1998, the date that she became disabled. The claimant has a high school education (GED), and she has completed one year of college. She has a work history that includes employment as a box office cashier and ticket taker, telephone company customer service representative, procurement clerk, and sales clerk. According to the record, the claimant has not engaged in substantial gainful activity since May 26, 1998; the record further reflects that she meets the eligibility requirements of Title II of the Social Security Act through December 31, 2002.

EVALUATION OF THE EVIDENCE

The clinical record indicates that the claimant's severe impairments include a bipolar disorder, fibromyalgia, and arthritis. The claimant also has asthma and gastroesophageal reflux disease (GERD).

At the hearing, the claimant testified that she has not worked since May 26, 1998, the date that her son perished in a motor vehicle accident. At that time, she was working in a movie theater, selling and taking tickets. The claimant described all of her past relevant work in detail, noting the functional requirements and duties of each job she has held.


The claimant stated that she had to stop working because of shortness of breath; her asthma and allergies seem to have gotten worse. She uses inhalers or takes breathing treatments four times per day. The claimant also told this Administrative Law Judge that she experiences a great deal of pain due to fibromyalgia and arthritis in her knees. The claimant reported to the undersigned that she had surgery on one of her knees within a year before the hearing; she ambulates with a cane because she falls down a great deal. The claimant told this Administrative Law Judge that she is undergoing treatment for manic depression; her medication includes lithium and Elavil. According to the claimant, she feels suicidal at times. She has been admitted to Charter Peachford Hospital for as long as eight days. The claimant admitted that, some days she does not get out of bed or get dressed. The claimant testified that she has had bladder and bowel problems and that she will be undergoing surgery for an ovarian cyst.

Milton H. Freedman, M.D., appeared and testified as a medical expert. After Dr. Freedman's professional qualifications were established for the record (see Exhibit 6B), this Administrative Law Judge ascertained that the medical expert had been accorded the opportunity to review the clinical record and that the medical expert had heard the credible testimony of the claimant. In response to questions from the Administrative Law Judge, the medical expert testified that the severity of the claimant's impairments do not meet or equal the severity requirements of any listed impairment. The medical expert stated that the claimant's manic depressive disorder would be the primary basis for the claimant's disability. The medical expert noted that fibromyalgia and emotional problems are usually found together.



According to the medical evidence of record, the claimant's testimony is fully corroborated; thus, the claimant is a credible witness. The clinical record also supports the testimony of the medical expert.

The clinical record reveals that the claimant's most severe impairment is her bipolar disorder. According to the claimant's treating psychiatrist, Dr. [REDACTED], M.D., the claimant has a long history of emotional problems remarkable for multiple manic episodes, multiple episodes of severe depression, numerous psychotic episodes, and numerous psychiatric hospitalizations. Dr. [REDACTED] noted in a letter dated June 24, 2002, that the claimant has a history of suicide attempts via drug overdoses. Regarding the claimant's work history, Dr. [REDACTED] stated that the claimant's last job was in a theater box office; however, she could not handle either the physical or mental requirements of the job. She was unable to stand for long periods to take tickets. Her concentration and mentation were so poor that she could not make change. If there was a line of people or if she had to handle customers' requests, she was unable to function. Dr. [REDACTED] indicated that the claimant has experienced a long history of confusion, forgetfulness, and cognitive functioning. Dr. [REDACTED] stated that this is typical of individuals with a bipolar disorder due to both the underlying condition and the medication used to treat it. Dr. [REDACTED] is of the opinion that the claimant is disabled because of her bipolar disorder. According to Dr. Malone, the claimant's life-long bipolar disorder has markedly eroded her ability to tolerate stress or adhere to performance standards. Dr. [REDACTED] indicated that the claimant is unable to perform even simple repetitive work at the sedentary level of exertion; such a job would trigger neuralgia pain, which would in turn trigger her fibromyalgia syndrome. Dr. [REDACTED] considered the claimant to be disabled due to her cognitive problems, bipolar disorder, chronic post-traumatic stress disorder, fibromyalgia, and physical problems (Exhibit 30F).

 If, as in this case, a treating physician's medical opinion is well-supported and not inconsistent with the other substantial evidence in the case record, it must be given controlling weight; however, controlling weight may not be given to the medical opinion of a treating source unless the opinion is well-supported by medically acceptable clinical evidence and is not inconsistent with the substantial evidence in the case record (SSR 96-2p). The medical evidence of record in this case amply supports Dr. [REDACTED]'s conclusions regarding the claimant (see Exhibits 1F, 2F, 4F, 5F, 8F, 9F, 10F, 11F, 12F, 16F, 17F, 18F, 19F, 20F, 21F, 22F, 23F, 24F, 25F, 26F, 27F, 28F, and 29F); moreover, Dr. Malone's own treatment and progress notes support his conclusions (see Exhibit 30).

A consultative psychological examiner who evaluated the claimant made clinical findings consistent with the conclusions of Dr. [REDACTED], the claimant's treating physician (Exhibit 3F).

RESIDUAL FUNCTIONAL CAPACITY

Residual functional capacity is what an individual can still do despite his or her functional limitations and restrictions caused by his or her medically determinable physical or mental impairments. Determining residual functional capacity is an assessment of the extent to which an individual's medically determinable impairment(s), including any related symptoms, such as pain, may cause physical or mental limitations or restrictions that may affect the claimant's

capacity to perform work-related physical and mental activities. Thus, residual functional capacity is the individual's maximum remaining ability to perform sustained work on a regular and continuing basis. If an individual is incapable of performing work activity at any level of exertion eight hours per day, five days per week, on a regular and routine basis, he or she does not have a residual functional capacity (SSR 96-9p).

In determining the claimant's ability to work, the undersigned must also consider and evaluate any assessment of the individual's residual functional capacity by a State agency medical or psychological consultant and by other program physicians or psychologists. Such assessments must be considered and addressed as medical opinions from non-examining sources (SSR 96-6p).

State Agency medical consultants and psychological consultants have examined the record from time to time and have concluded that the claimant has the residual functional capacity to perform work or work-related activities. However, the medical consultants have viewed the case only from the perspective of those impairments that fall within their respective medical specialties, as they are required to do (see Exhibits 6F, 7F, 13F, and 14F). Thus, none of the State Agency medical consultants or psychological consultants concluded that the claimant was disabled. Conversely, the claimant's treating sources, in particular Dr. [REDACTED], have both a longitudinal view of the claimant's medical status, as well as a broader view that incorporates information that is outside of a particular doctor's specialty. For this reason, the opinions and conclusions of the State Agency medical consultants and psychological consultants cannot be accorded controlling weight (SSR 96-6p).

Based upon the objective findings set forth in the clinical record, the undersigned concludes that the claimant is incapable of performing work activity at any level of exertion eight hours per day, five days per week, on a regular and routine basis.

ASSESSMENT REGARDING PAST RELEVANT WORK

Because of the foregoing, the claimant is incapable of performing her past relevant work because she is incapable of performing work activity at any level of exertion eight hours per day, five days per week, on a regular and routine basis.

ASSESSMENT OF THE CLAIMANT'S ABILITY TO PERFORM OTHER WORK

Once a claimant has established that she cannot perform her past relevant work because of her impairments, the burden shifts to the Commissioner to show that there are other jobs existing in significant numbers in the national economy which she can perform, consistent with her medically determinable impairments, functional limitations, age, education and work experience. In meeting this burden of proof, the Commissioner has promulgated the Medical-Vocational Rules found in Appendix 2, Subpart P, Title 20 of the Code of Federal Regulations. Those rules take into account the claimant's age, education, work experience, and residual functional capacity in assessing employment potential.

If the claimant had the ability to perform work activity eight hours per day, five days per week, on a regular and routine basis and possessed the retained the residual functional capacity for the full range of sedentary work, Rule 201.28 and Rule 201.29, Table No. 1, Appendix 2, Subpart P, Title 20 of the Code of Federal Regulations, would direct a finding of "not disabled," given the claimant's age, education and work experience if she was otherwise incapable of performing her past relevant work. However, inasmuch as the claimant is incapable of performing work activity at any level of exertion eight hours per day, five days per week, on a regular and routine basis, due disruptions from emotional causes and physical limitations, application of the Grid Rules is inappropriate.

In this regard, in accordance with the guidance set forth at Section 20.00(E), Appendix 2, Subpart P, Title 20 of the Code of Federal Regulations and SSR 96-9p, the undersigned concludes that the claimant's ability to perform work or work-related activities is so compromised that a finding of "disabled" is clearly appropriate.

This conclusion is supported by the vocational expert, who testified that, given the claimant's difficulties in concentration, and in consideration of the fact that the claimant would have frequent absences due to her need for medical treatment, the claimant would be an unreliable employee unable to maintain production norms.

CONCLUSION

Accordingly, based upon all of the foregoing, the undersigned Administrative Law Judge finds that the claimant has been continuously disabled since May 26, 1998.

FINDINGS

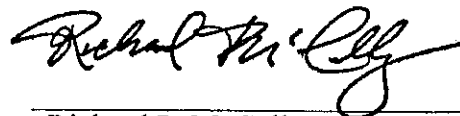
After careful consideration of the entire record, the Administrative Law Judge makes the following findings:

1. The claimant has not engaged in substantial gainful activity since May 26, 1998.
2. The medical evidence establishes that the claimant has the following severe impairments: bipolar disorder, fibromyalgia, and arthritis.
3. The claimant has no impairment that meets or equals the criteria of any impairment listed in Appendix 1, Subpart P, Part 404, Title 20 of the Code of Federal Regulations.
4. The claimant's assertions concerning her ability to work are credible.
5. The claimant is unable sustain work or work-related activities eight hours per day, five days per week, on a regular and routine basis.

6. The claimant is unable to perform the requirements of her past relevant work because of her inability to perform work activity at any level of exertion eight hours per day, five days per week, on a regular and routine basis.
7. On May 29, 1998, the claimant was closely approaching advanced age.
8. The claimant has at least a high school education.
9. The claimant has a semi-skilled work background. However, due to the nature of her impairments, her skills are not transferable.
10. Considering the claimant's inability to perform work activity at any level of exertion eight hours per day, five days per week, on a regular and routine basis, she cannot make an adjustment to any work that exists in significant numbers in the national economy; a finding of disabled is therefore reached within the framework of medical-vocational rule SSR 96-9p.
11. The claimant has been under a disability, as defined in the Social Security Act, since May 29, 1998 (20 CFR §404.1520(f)).

DECISION

It is the decision of the Administrative Law Judge that, based on the application filed on October 10, 2000, the claimant is entitled to a period of disability commencing May 29, 1998, and to Disability Insurance Benefits under sections 216(i) and 223, respectively, of the Social Security Act.



Richard P. McCully
Administrative Law Judge

OCT 25 2002

Date