



Refer To: [REDACTED]

Office of Hearings and Appeals
60 Forsyth Street
Suite 2M15
Atlanta, GA 30303
Telephone: (404) 562-5570
Date: OCT 17 2002

Willie [REDACTED]
[REDACTED] 4
D [REDACTED] 6

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.

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 (404)244-4018. Its address is 2853 Candler Road, Suite 8, Decatur GA 30034.


Curtis R. Boren
Administrative Law Judge

cc: Jonathan C. Ginsberg
1830 Independence Square
Dunwoody, GA 30335

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

DECISION

IN THE CASE OF



(Claimant)

CLAIM FOR

Period of Disability,
Disability Insurance Benefits, and
Supplemental Security Income

(Wage Earner)



(Social Security Number)

INTRODUCTION

This case is before the Administrative Law Judge on a request for a hearing. The Administrative Law Judge has carefully considered all of the documents identified in the record as exhibits, the testimony of the witnesses, and the arguments presented.

The claimant filed concurrent applications for a period of disability and disability insurance benefits under Title II of the Social Security Act and for supplemental security income under Title XVI of the Social Security Act on February 10, 2000, alleging disability since September 9, 1998, as a result of rheumatoid arthritis; joint pain and swelling; and rheumatic heart disease. The applications were denied initially and on reconsideration and, following a timely request, a hearing was held before the undersigned Administrative Law Judge in Atlanta, Georgia, on October 3, 2002. The claimant and a vocational expert, William Porter, appeared and testified. The claimant was represented by his attorney, Jonathan Ginsberg.

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, and whether he is disabled under section 1614(a)(3)(A) 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.

With respect to the claim for Disability Insurance Benefits, there is an additional issue pertaining to insured status. A review of the claimant's earnings record reveals that he has earned sufficient quarters of coverage to remain insured at least through the date of this decision.

EVALUATION OF THE EVIDENCE

The claimant is presently 59 years old and was 55 years old as of the alleged onset date of disability. He has an 11th grade education and is illiterate. He has past relevant work experience as a laborer (heavy/unskilled).

The record reflects that the claimant has not engaged in substantial gainful activity after the alleged onset date of disability (Exhibit 4D).

The medical evidence of record, discussed below, reflects that the claimant has the following impairments which are deemed to be "severe" in that the impairments, either singly or in combination, have more than a minimal adverse impact on his ability to perform work-related activities: degenerative disc disease; rheumatic heart disease; coronary artery disease; hypertension; and anxiety. The impairments do not, however, either singly or in combination, meet or equal in severity the criteria of any impairment specified in the Listing of Impairments, 20 CFR Part 404, Appendix 1 of Subpart P.

The claimant testified that he completed the 11th grade, however he is unable to read or write. His last job was doing construction cleanup. He stated that he is unable to work due to back pain. The claimant testified that he is able to walk about 20 to 30 feet before he becomes tired. He indicated that he is able to sit for awhile before he has to get up and move around. He testified that he does not get much sleep at night. He stated that he is able to lift/carry a gallon pitcher. The claimant indicated that he gets headaches approximately two times per week. He stated that he has chest pains located in the middle of his chest, which are sharp in nature. He gets these chest pains approximately twice a month. The claimant testified that his doctor has diagnosed him with anxiety attacks. The claimant stated that he also becomes angry and loses his temper and starts trembling. He indicated that he has a tremor in his hands from the rheumatic fever.

The relevant medical evidence is as follows. The claimant has been under the care of Dr. [REDACTED] since June 14, 2000 for his heart disease. He is treated by Dr. [REDACTED] every 1-2 months. In a functional capacity evaluation dated June 4, 2001 Dr. [REDACTED] reported that the claimant has been diagnosed with rheumatic heart disease; hypertension; hyperlipidemia; essential tremor; borderline diabetes; and lumbar strain. The claimant's symptoms include dizziness and fatigue. He reported that the claimant has painful right hip, ankle, and foot movement, with spinal deformity and tenderness. Dr. [REDACTED] opined that the claimant would be unable to lift any weight and stand for prolonged periods of time. He rated his pain as moderate and stated that it would often interfere with the claimant's attention and concentration especially if he overexerts himself. Dr. [REDACTED] opined that the claimant could sit for 2 hours; stand for 45 minutes; and walk for 30 minutes and would require the ability to shift positions at will from sitting standing and walking. It was Dr. [REDACTED]'s opinion that the claimant could stand less than 2 hours and sit 2 hours in an 8 hour workday. He would be unable to get through a workday

without lying down during the day. The claimant could occasionally lift 11-20 pounds; 10 pounds or less frequently. He has significant limitations in the ability to use his right foot and toes for repetitive movements as in operating foot controls due to pain. He should never squat; crawl; climb; and crouch. He could occasionally bend; reach; stoop; and kneel. Dr. [REDACTED] opined that the claimant's limitations were due to lumbar strain and his rheumatic heart disease. He further opined that the claimant's impairments and/or treatment would cause him to be absent from work three or more times a month (Exhibit 4F).

A medical statement dated August 9, 2001, completed by Dr. [REDACTED] indicated that the claimant suffers from rheumatic heart disease; hypertension; anxiety; and coronary artery disease. Dr. [REDACTED] opined that the claimant would be unable to work and is disabled because of his impairments. He further indicated that Dr. Bobby [REDACTED], a cardiologist had evaluated the claimant for the above conditions and had reported that the claimant's disability was found to be permanent at this time (Exhibit 5F).

X-rays of the cervical and lumbar spine taken on August 11, 2001 reflect that the claimant had mild to moderate lumbar spondylitic changes. There were hypertrophic degenerative changes at the superior aspect S1 joints with possible partial effusion (Exhibit 6F).

On October 16, 2001 the claimant underwent a treadmill echocardiographic study for active ischemic disease. The test was negative, however limited in quality secondary to poor windows. Electrocardiographic changes were mild, however might be significant for underlying coronary ischemia. The claimant had normal pulse response to exercise. He had an accelerated blood pressure response (shot up to 160/100 within 1 minute of exercise). The test revealed that the claimant had poor exercise capacity (Exhibit 8F, p.14).

Treatment records dated June 20, 2002, by Dr. Bobby [REDACTED] reflect that the claimant's back pain and rheumatic heart disease was becoming worse. The claimant indicated that he still got short of breath, especially upon exertion. He also complained of shooting pain in his legs on minimal bending. It was Dr. [REDACTED]'s opinion that the claimant would be unable to sustain gainful employment (Exhibit 8F, p.20).

After careful consideration of the entire record, the undersigned concludes that the claimant's impairments prevent him from performing even sedentary work on a sustained basis, eight hours per day, 40 hours per week. This is consistent with the medical assessment evaluation completed by Dr. [REDACTED] and contained in Exhibit 4F. Dr. [REDACTED]'s opinion in this regard is consistent with the record when considered in its entirety, is well supported by medically acceptable clinical and laboratory diagnostic technique, and is entitled to controlling weight. This is in accordance with Social Security Ruling 96-2p.

In reaching this conclusion, the undersigned has also considered the opinions of the State Agency medical consultants at the lower levels of the administrative review process. However, additional evidence received into the record since that time, in conjunction with the claimant's testimony, convinces the undersigned that the claimant is more limited than originally thought.

Mr. Porter, the vocational expert, was asked to consider a person of the claimant's age, education, past work experience and residual functional capacity consistent with the medical assessment evaluation completed by Dr. [REDACTED] and contained in Exhibit 4F. Mr. Porter testified that such a person would be unable to perform the claimant's past work or any other jobs existing in significant numbers in the national economy.

The claimant's description of his limitations is consistent with the record when considered in its entirety. The claimant cannot perform his past relevant work and does not have transferable skills to perform other work within his residual functional capacity.

Given the claimant's residual functional capacity, and the vocational factors of his age, education, and past relevant work experience, there are no jobs existing in significant numbers that he is capable of performing. This finding is based on Social Security Rulings 96-8p and 96-9p and the testimony of the vocational expert.

Accordingly, the claimant is entitled to a period of disability September 9, 1998, and he is entitled to disability insurance benefits on the basis of his application filed on February 10, 2000 and eligible for Supplemental Security Income payments by virtue of his application of February 10, 2000.

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 September 9, 1998.
2. The medical evidence establishes that the claimant has the following severe impairments: degenerative disc disease; rheumatic heart disease; coronary artery disease; hypertension; and anxiety.
3. The claimant has no impairment that meets or equals the criteria of any impairment listed in Appendix 1, Subpart P, Regulations No. 4.
4. The claimant's assertions concerning his ability to work are credible.
5. The claimant has a residual functional capacity consistent with the medical assessment evaluation of Dr. [REDACTED] contained in Exhibit 4F and is unable to perform even sedentary work on a sustained basis, eight hours per day, forty hours per week.
6. The claimant is unable to perform the requirements of his past relevant work.
7. On September 9, 1998, the claimant was of advanced age.
8. The claimant has a limited education.

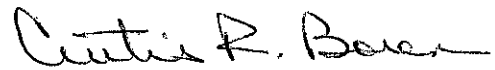
9. The claimant has an unskilled work background.
10. Based on the claimant's residual functional capacity and vocational factors, there are no jobs existing in significant numbers he can perform. This finding is based on Social Security Rulings 96-8p and 96-9p and the testimony of the vocational expert.
11. The claimant has been under a disability, as defined in the Social Security Act, since September 9, 1998 (20 CFR §§404.1520(f) and 416.920(f)).

DECISION

It is the decision of the Administrative Law Judge that, based on the application filed on February 10, 2000, the claimant is entitled to a period of disability commencing September 9, 1998 and to Disability Insurance Benefits under sections 216(i) and 223, respectively, of the Social Security Act.

It is the further decision of the Administrative Law Judge that, based on the application filed on February 10, 2000, the claimant was disabled under section 1614(a)(3)(A) of the Social Security Act, beginning September 9, 1998, and that the claimant's disability has continued at least through the date of this decision.

The component of the Social Security Administration responsible for authorizing Supplemental Security Income payments will advise the claimant regarding the non-disability requirements for these payments, and if eligible, the amount and the months for which payment will be made.



Curtis R. Boren
Administrative Law Judge

OCT 17 2002

Date