



**SOCIAL SECURITY ADMINISTRATION**

Refer To: [REDACTED]

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

Date: DEC 16 2002

Karen H. [REDACTED]  
[REDACTED]  
[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 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.

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### **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 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 416.1470 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)532-7506. Its address is 1856 Thompson Bridge Road NE, Suite 107, Gainesville GA 30501.

Kathleen A. McGraw  
Administrative Law Judge

cc: Jonathan C. Ginsberg, Esq.  
1854 Independence Sq.  
Dunwoody, GA 30338

SOCIAL SECURITY ADMINISTRATION  
Office of Hearings and Appeals

ORDER

IN THE CASE OF

CLAIM FOR

Karen [REDACTED]  
(Claimant)

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.

Kathleen A. McGraw

Kathleen A. McGraw  
Administrative Law Judge

DEC 16 2002

Date



The issue of claimant's status, i.e., whether she is Mr. [REDACTED]'s widow, would have to be decided in an initial and reconsidered determination before I could adjudicate that claim. Nonetheless, after the hearing claimant's representative attempted to have escalated to the hearing level a disabled widows application, which was filed on December 9, 2002. That application will not be escalated and must be pursued at the initial and reconsideration levels. It is not being adjudicated here. If, however, it is found that the claimant is the widow of Mr. Dutton, collateral estoppel as to the finding of disability in this case can be applied to the disabled widow's claim on the issue of disability.

### EVALUATION OF THE EVIDENCE

The claimant is a 50-year-old individual with a tenth grade education and past relevant work identified by the vocational expert at the hearing as a delicatessen clerk (semi-skilled, light); daycare cook (semi-skilled, light); and waitress (unskilled, light). Other jobs as a service cashier and loan officer were not performed at levels commensurate with substantial gainful activity, and cannot be considered past relevant work (Exhibits 3D and 3E). She has not engaged in substantial gainful activity at any time since the alleged onset date.

The claimant has the following medically determinable severe impairments: residual effects of lumbar spine fusion at L5-S1; degenerative osteoarthritis of the knees; and post-operative right knee infection.

The record shows that claimant had a history of low back pain which worsened in 2001, and as of May 2001, MRI scan of the lumbar spine showed advanced degenerative disc disease at L5-S1, with spurring that caused stenosis; spondylolisthesis; and instability (Exhibit 3F, page 14). Following an unsuccessful course of conservative treatment, claimant underwent fusion surgery in September 2001. Following surgery, she was treated for nausea and persistent low back pain, and continued to require a significant amount of pain medication (*Id.*, page 3).

MRI scan of the lumbar spine as of April 2002, showed diffuse spondylitic changes without nerve impingement (Exhibit 3F, page 2). Claimant fell on April 11, 2002, and was found on x-ray to have advanced degenerative arthritis of both knees (Exhibit 7F, page 62). Though treated with arthroscopic surgery on the right knee in June 2002, she required post-operative treatment for wound infection (Exhibit 7F, page 5 and 11F). Subsequently submitted medical records reflect ongoing chronic pain in the knees and low back (Exhibits 11-12F).

As of mid-October 2002, treating surgeon, Dr. [REDACTED] provided a medical source statement on which he opined that claimant is incapable of sustaining work over a normal workday or workweek due to severe degenerative disc disease, bilateral knee pain, and the need for chronic narcotic pain medications. He also noted her bizarre behavior while hospitalized in July 2002 (see Exhibit 7F, page 3). This medical source statement is consistent with the overall findings of

[REDACTED]

this decision, and has been accorded considerable weight for the purpose of this decision (SSR 96-2p).

The record indicates that claimant has been referred for mental health treatment related to bizarre behaviors, and that she has been found to engage in drug seeking behaviors at times (Exhibits 7F, page 3, and 11F). For this reason, the appointment of a representative payee should be considered.

The documentary evidence supports a finding that by the time that claimant recovered from lumbosacral fusion surgery, she was within six months of attaining age 50. She has not, since August 28, 2001, regained the residual functional capacity to perform more than sedentary work.

In reaching this conclusion, the undersigned has considered the claimant's own subjective allegations and has found them generally credible with regard to ongoing back and bilateral knee pain that restricts her ability to remain on her feet for long periods. She is not, however, credible with regard to drug seeking behaviors indicated in Dr. [REDACTED]'s treatment notes (Exhibits 11-12F). Consideration has also been given the reports of the state agency medical consultants; however, the record has been significantly expanded since their reviews (Exhibits 2F and 4-5F).

In her former work, the claimant was required to perform light exertion. Her present residual functional capacity precludes performance of this level work.

As the claimant has demonstrated that she lacks the residual functional capacity to perform the requirements of any past relevant work, the burden shifts to the Social Security Administration to show that there are other jobs that she can perform. This determination is made in conjunction with the medical-vocational guidelines of Appendix 2 of Subpart P of the regulations (20 CFR Part 404). Appendix 2 contains a series of rules that direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's age, education, work experience, and residual functional capacity.

Born July 20, 1952, the claimant was within six months of 50 years old as of January 2002, the point at which she recovered sufficiently to perform any level of work. For the purpose of this decision, she is considered to be closely approaching advanced age. She has a tenth grade education and a semi-skilled work background, but has no transferable skills.

Since the evidence supports a finding that the claimant can perform the demands of no more than sedentary work, a finding of disabled is directed by medical-vocational rule 201.10.

Thus, the claimant has been under a disability beginning August 28, 2001. Eligibility for Supplemental Security Income payments is based on the application filed on August 28, 2001.

**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 August 28, 2001.
2. The medical evidence establishes that the claimant has the following severe impairments: residual effects of lumbar spine fusion at L5-S1; degenerative osteoarthritis of the knees; and post-operative right knee infection.
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 her ability to work are generally credible, though her drug seeking behaviors suggest caution should be taken with regard to direct payment of benefits.
5. The claimant was unable to perform any work from the onset date until January 2002, at which point she recovered to such extent that she could perform no more than sedentary work.
6. The claimant is unable to perform the requirements of her past relevant work.
7. On August 28, 2001, the claimant was closely approaching advanced age.
8. The claimant has a tenth grade education.
9. The claimant has a semi-skilled work background, but has no transferable skills.
10. Based on an exertional capacity for sedentary work, and the claimant's age, education, and work experience, a finding of disabled is directed by medical-vocational rule 201.10.
11. The evidence in the record suggests that the claimant may not be capable of managing her funds.
12. The claimant has been under a disability, as defined in the Social Security Act, since August 28, 2001 (20 CFR §416.920(f)).

**DECISION**

It is the decision of the Administrative Law Judge that, based on the application filed on August 28, 2001, the claimant is disabled under section 1614(a)(3)(A) of the Social Security Act, beginning August 28, 2001, 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 nondisability requirements for these payments, and if eligible, the amount and the months for which payment will be made.

Because there is evidence that the claimant may have difficulty in managing her benefits, the undersigned recommends that the component responsible for effectuating this decision determine whether the appointment of a representative payee is warranted.

  
Kathleen A. McGraw  
Administrative Law Judge

DEC 16 2007  
Date