



SOCIAL SECURITY ADMINISTRATION

Refer To: [REDACTED]

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

Date: **MAY 21 2002**

L [REDACTED]
823-C [REDACTED]
Roswell, GA 30076

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

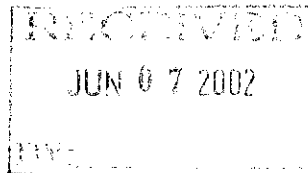
If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeals Council.

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

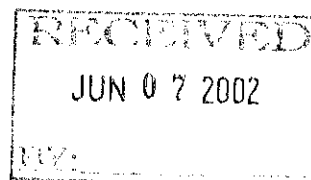
If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

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) 424-4871. Its address is 1395 S. Marietta Parkway, Suite 130, Bldg. 100, Marietta GA 30067.

Paul T. Baird
Administrative Law Judge

cc: Jonathan C. Ginsberg
Attorney-at-law
P O Box 88956
Atlanta, GA 30356



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

DECISION

IN THE CASE OF

CLAIM FOR

[REDACTED]
(Claimant)

Period of Disability and
Disability Insurance Benefits

(Wage Earner)

[REDACTED]
(Social Security Number)

INTRODUCTION

On September 29, 2000 (protective filing date), the claimant filed an application for Disability Insurance Benefits. The claim was denied initially and on reconsideration, and a request for hearing was timely filed on August 2, 2001. A hearing was subsequently held on April 30, 2002, in Atlanta, GA. Appearing and offering testimony at the hearing were the following: the claimant, and Helen C. Freeman, M.D., a medical expert. Also present but not testifying was Deborah Bunn-Durham, a vocational expert. The claimant originally alleged disability beginning April 3, 2000, due to irritable bowel syndrome, Epstein-Barr disease, temporomandibular joint dysfunction, Meniere's disease, chronic fatigue syndrome, chronic inflammatory disease, migraines, allergies, hypogammaglobulinemia, and chronic sinusitis. The claimant, by and through her attorney at the hearing, amended her alleged onset date to July 31, 2000. Jonathan C. Ginsberg, an attorney, represents the claimant in this matter.

The general issue is whether the claimant is entitled to a period of disability and Disability Insurance Benefits under §§ 216(i) and 223 of the Social Security Act. The specific issue is whether she 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.

A review of the claimant's earnings record reveals that she has earned sufficient quarters of coverage to remain insured at least through the date of this decision.

EVALUATION OF THE EVIDENCE

The claimant is a 38-year-old individual with a high school education and two years of college. She has past relevant work as photographer, transcriptionist, receptionist, data entry clerk, mystery shopper, product demonstrator/coordinator, telephone canvasser, administrative assistant, and waitress. The claimant testified at the hearing that after the amended alleged onset date, she attempted to work for three days for a friend answering telephones, but was unable to continue due to nausea. Based on the evidence, this brief work effort by the claimant was an unsuccessful work attempt that did not rise to the level of substantial gainful activity as defined by the regulations. 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: chronic fatigue syndrome (CFS); Epstein-Barr virus disease; hypogammaglobulinemia; frequent infections; and migraine headaches.

The claimant has a history of a myriad of medical problems, including childhood mononucleosis, herpes simplex (4/81), deviated septum, migraine headaches precipitated by barometric change, cigarette smoke, perfume and hairspray (5/92); early menopause with low estrogen and early ovarian failure (2/92); gastroesophageal reflux and irritable bowel syndrome (11/95); hives (2/97); Meniere's disease with 30% right ear hearing loss (7/97); allergic conjunctivitis (7/98); gastric ulcers (5/99); impaired immune system; hypogammaglobulinemia (6/00); heme positive stools (8/00); mild chronic duodenitis and mild chronic gastritis ((9/5/00); mild chronic cholangitis; diplopia, and binocular vision disorder (Exhibits 1F to 5F, 7F, 9F, 12F to 21F, 24F to 42F, and 45F).


On March 25, 2002, Ronald [REDACTED], M.D., who treated claimant on a regular basis from April 2001 through September 2001, for Meniere's disease, benign paroxysmal positional vertigo, autoimmune disease, and migraines and related vertigo, completed a Functional Capacities Evaluation, noting the claimant's symptomatology included chronic fatigue, muscle weakness, vestibular dysfunction, numbness and tingling, and anxiety (Exhibit 43F). Dr. [REDACTED] assessed that claimant has the residual functional capacity to sit one hour, stand 10 minutes, and walk 10 minutes with the need to shift positions at will, and further that she could sit stand or walk less than two hours total in an eight-hour work day. He opined that the claimant could not get through an eight-hour work day without having to lie down, and that the claimant at times needed assistive devices for standing/walking. He assessed that the most claimant could lift carry occasionally was five pounds, that she was restricted against repetitive reaching, handling or fingering and operating foot controls, squatting, crawling, climbing, and occasional bending, reaching, stooping, crouching and kneeling. Dr. [REDACTED] further assessed that the claimant's impairments would cause her to be absent from work three or more times per month.

By letter dated April 1, 2002, [REDACTED], M.D., who treated the claimant on three occasions beginning on November 9, 2001, opined that the claimant has fibromyalgia based on complaints of widespread pain, fatigue, and multiple tender points on exam-

[REDACTED]

ination (Exhibit 44F). Dr. [REDACTED] partially completed a Functional Capacities Evaluation based on the claimant's diagnosed fibromyalgia and arthralgias, indicating symptomatology of multiple tender points, chronic fatigue, morning stiffness, muscle weakness, subjective swelling, IBS, frequent severe headaches, and sicca symptoms (Exhibit 44F/2-4). She opined that the claimant's impairments lasted or could be expected to last at least 12 months.

State Agency medical consultants completed physical residual functional capacity (RFC) assessments in January and June 2001, which assessed that the claimant has the physical capacity for medium and light exertion level work, respectively (Exhibits 10F and 22F). The first physical RFC assessed restrictions against climbing ladders/ropes/scaffolds, and occasional climbing ramps/stairs. The June 2001 RFC further assessed restrictions against all exposure to workplace hazards, such as machinery, heights, etc.

 Based on the evidence, the claimant does not have an impairment that meets or equals the criteria of any listed impairment. A determination must therefore be made of whether she retains the residual functional capacity to perform the requirements of her past relevant work or can adjust to other work.

At the hearing, the claimant testified that she worked last worked on July 31, 2000, as a delicatessen representative for [REDACTED] meat products. She said that she attempted to work for three days for a friend answering telephones, but was unable to continue due to nausea. She said that after she quit the job with [REDACTED], she was on short-term disability drawing 66% paid by the insurance company. She stated that the symptoms that keep her from working are nausea, dizziness, fatigue, soreness, achiness, problems with concentration, and unpredictable need for bathroom breaks. She stated that she is, or has been, seeing up to 24 doctors for treatment, that on a typical day, she gets up in time to go to a doctor's appointment for examination and/or testing, which can last until about 1:00 PM, and then goes home and goes to bed. She said that on the days she does not have medical appointments, she spends six hours during the day lying down. She stated that when she left the hearing, she would go home and lie down, very fatigued. She said that she is not able to socialize like she used to.

The medical expert, Dr. Freeman, testified after having reviewed all of the medical evidence that the claimant has documented evidence of CFS, Epstein-Barr virus disease, hypogammaglobulinemia, and frequent infections. Dr. Freeman opined that the claimant does not have any impairment that meets or equals the criteria for any of the Medical Listings. She assessed that the claimant's impairments impose functional limitations that prevent her from being able to sustain work for a regular eight-hour day at any exertional level, and that this has been the case since she left her [REDACTED] job on July 31, 2000.

State agency medical consultants completed physical residual functional capacity (RFC) assessments, which assessed that the claimant has the physical capacity for light to

medium work. However, Dr. [REDACTED], who actually examined and treated the claimant on a regular basis since November 2000, assessed that she does not have the residual functional capacity to sustain even sedentary exertion level work on a full or part-time basis. The claimant testified that her impairments cause her to spend about six hours per day lying in bed. Further, Dr. Freeman opined the claimant's impairments impose functional limitations that prevent her from being able to sustain work for a regular eight-hour day at any exertional level. Based on all of the evidence, I find that the claimant retains the residual functional capacity to perform less than a full range of sedentary exertion level work, and due to the functional limitations imposed by her impairments of CFS, Epstein-Barr virus disease, hypogammaglobulinemia, frequent infections, and migraine headaches, she is prevented from performing a sustained regular work day/week at even the sedentary level of exertion. The claimant does not retain the residual functional capacity to sustain regular full-time work at even the sedentary exertion level (See Social Security ruling 96-9p).

In reaching this conclusion, I have considered the claimant's own subjective allegations and have found them generally credible in light of the objective evidence of record, and particularly the report of Dr. [REDACTED] at Exhibit 43F, who examined and treated the claimant on a regular basis, and assessed that she does not retain the capacity to perform even sedentary exertion level work on a sustained regular basis. Further, Dr. Freeman, the medical expert, opined that the claimant's impairments impose functional limitations that prevent her from being able to sustain work for a regular eight-hour day at any exertional level. I found the claimant to be a credible and convincing witness. Consideration has also been given the reports of the state agency medical consultants as well as to other treating, examining and non-examining medical sources. The undersigned has considered the opinions of the State Agency medical examiners, regarding the claimant's ability to perform basic work activities in accordance with Social Security Ruling 96-6p, but has had the advantage of additional medical evidence. In this case, the RFC assessments of the State agency medical consultants that she can perform light or medium exertional work overestimate the claimant's exertional capacity, and are therefore discounted. Based on all of the evidence, including the opportunity to observe the claimant at the hearing and hear her testimony, as well as that of the medical expert, I find that the claimant is more limited than she was originally assessed (Social Security Ruling 96-6p).

Considering the claimant's residual functional capacity is for less than sustained regular sedentary exertional work, I find that the claimant is unable to perform any past relevant work as photographer, transcriptionist, receptionist, data entry clerk, mystery shopper, product demonstrator/coordinator, telephone canvasser, administrative assistant, and waitress. Further I find that she does not have any skills transferable to other work due to her current RFC.







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 the claimant can perform. This determination is made in conjunction with the medical-vocational guidelines of Ap-

pendix 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. Since the evidence indicates that the claimant is not even able to sustain sedentary level work on a sustained regular basis, a finding of "disabled" may therefore be reached within the framework of medical-vocational rule 201.06 and Social Security Ruling 96-9p.

In accordance with a finding that the claimant has been under a disability beginning July 31, 2000, the amended alleged onset date, she is entitled to Disability Insurance Benefits on the basis of her protectively filed application of September 29, 2000.

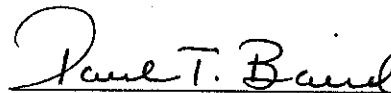
FINDINGS

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 July 31, 2000.
-  2. The medical evidence establishes that the claimant has the following severe impairments: chronic fatigue syndrome; Epstein-Barr virus disease; hypogammaglobulinemia; frequent infections; and migraine headaches.
-  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 credible.
5. The claimant does not retain the residual functional capacity to perform a sustained regular work day/week at any level of exertion.
-  6. The claimant is unable to perform the requirements of her past relevant work.
-  7. Considering the claimant's additional limitations, 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 rules and Social Security Ruling 96-9p.
8. The claimant has been under a disability, as defined in the Social Security Act, since July 31, 2000, the amended alleged onset date (20 CFR §404.1520(f)).

DECISION

It is the decision of the Administrative Law Judge that, based on the application filed on September 29, 2000 (protective filing date), the claimant is entitled to a period of disability commencing July 31, 2000, the amended alleged onset date, and to Disability Insurance Benefits under §§ 216(i) and 223, respectively, of the Social Security Act.



Paul T. Baird
Administrative Law Judge

MAY 21 2002

Date