



**SOCIAL SECURITY ADMINISTRATION**

Refer To:

Office of Disability Adjudication and Review  
Charleston Fed Center  
500 Quarrier Street  
Suite 100  
Charleston, WV 25301

Date: **JUL 18 2006**

Suzanne

**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.

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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 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.

**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)859-0123. Its address is Social Security, 1415 Franklin Rd Se, Marietta, GA 30067.

Buel S  
U.S. Administrative Law Judge

cc: Jonathan Ginsberg  
Ginsberg Law Offices  
1854 Independence Sq.  
Suite A  
Atlanta, GA 30338

**SOCIAL SECURITY ADMINISTRATION  
Office of Disability Adjudication and Review**

**DECISION**

**IN THE CASE OF**

**CLAIM FOR**

Su  
(Claimant)

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

\_\_\_\_\_  
(Wage Earner)

\_\_\_\_\_  
(Social Security Number)

**JURISDICTION AND PROCEDURAL HISTORY**

On April 25, 2003, 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 April 25, 2003. In both applications, the claimant alleged disability beginning June 15, 2001. These claims were denied and are now before the undersigned Administrative Law Judge on a timely written request for hearing filed on August 3, 2004 (20 CFR 404.929 *et seq.* and 416.1429 *et seq.*). The claimant appeared and testified at a hearing held on June 21, 2006, in Atlanta, Georgia. Also appearing and testifying were Dr. John W Davis, a qualified psychologist, and Dr. Judith Brendemuehl, an impartial medical expert. Deborah Bunn-Durham, an impartial vocational expert, was also present. The claimant is represented by Jonathan Ginsberg, an attorney.

**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, 2006. 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, 2001 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 (20 CFR 404.1520(b) and 416.920(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) and 416.972(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) and 416.972(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 she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). 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. 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 and 416.921; 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, 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).

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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) and 416.920(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), 404.1565, 416.960(b), and 416.965). 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, 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 meets the insured status requirements of the Social Security Act through December 31, 2006.**
- 2. The claimant has not engaged in substantial gainful activity since June 15, 2001, 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 impairments: cervical and lumbar disc disease, fibromyalgia, disc bulging in the cervical and lumbar spines, and discoid lupus erythematosus (20 CFR 404.1520(c) and 416.920(c)).**

Dr. John W. Davis, a qualified psychologist, testified that as a consequence of her medical problems, it was reasonable to assume that if psychologically tested, the claimant would be found to have both depression and a chronic pain disorder resulting from her physical difficulties. Doctor Davis further testified that the claimant impressed him as a high achieving individual who when working was often inclined to do far more than was expected of her on her job; i.e., a high achiever.

Judith Brendemuehl, M. D., a qualified medical expert, testified the medical evidence shows fibromyalgia began in 1995. Doctor Brendemuehl testified further that there is also a treatment

history for chronic cystitis, and episodic gastrointestinal symptoms. Given the fibromyalgia, fatigue, chronic pain syndrome, and the impact of these factors on the claimant's residual functional capacity, Doctor Brendemuehl testified she agreed with opinions in the record from treating sources that the claimant was incapable of sustained work. She testified that these individuals concluded that the claimant was unable to address the occupational demands of a full eight hour work day. Doctor Brendemuehl further testified that it was not unusual for individuals with fibromyalgia and accompanying chronic pain disorders to participate in programs such as yoga and an exercise regimen she identified as pilates. The undersigned accepts Doctor Brendemuehl's testimony and the opinions of the claimant's treating sources in the documentary record. There is sufficient documentary objective medical evidence to support this conclusion.

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) and 416.920(d)).**

**5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform work related activities on a regular and continuous basis.**

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 and 96-6p.

Based on the testimony provided at the hearing from both Doctor Brendemuehl and Doctor Johnson, it is apparent that factors such as fatigue, side effects of medication, and joint related discomfort are sufficient to justify medical opinions not only from treating sources in the documentary record, but hearing testimony from both Doctor Brendemuehl and Doctor Johnson, both of whom indicated that in their opinion, the type of subjective symptoms the claimant has alleged are consistent with the type of disease processes she has.

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairments can reasonably be expected to produce the symptoms she alleges, and that her statements and hearing testimony about the intensity, persistence and limiting effects of these symptoms are highly credible. The claimant testified at the hearing that her pain typically ranges from seven to nine on a scale of ten.

The State agency medical opinions are given little weight because other medical opinions in both the written record from treating sources and expert testimony at the hearing from Doctor Johnson as well as Doctor Brendemuehl are more consistent with the record as a whole. Also, evidence entering the record after the medical opinions from the state agency medical sources shows that

the claimant is more limited than determined by these nonexamining medical 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 and 416.965).**

The claimant has past relevant work as a person involved in various office and clerical activities were exertionally light and sedentary in exertion and skilled. Accordingly, the claimant is unable to perform past relevant work.

**7. The claimant was a younger individual age 18-44 on the date disability is established (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).**

At best, the claimant would be capable of performing sedentary level work that is routine, low stress, and entry level in degree of difficulty.

**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.

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