

# **INTRODUCTION TO SOCIAL SECURITY DISABILITY LAW**

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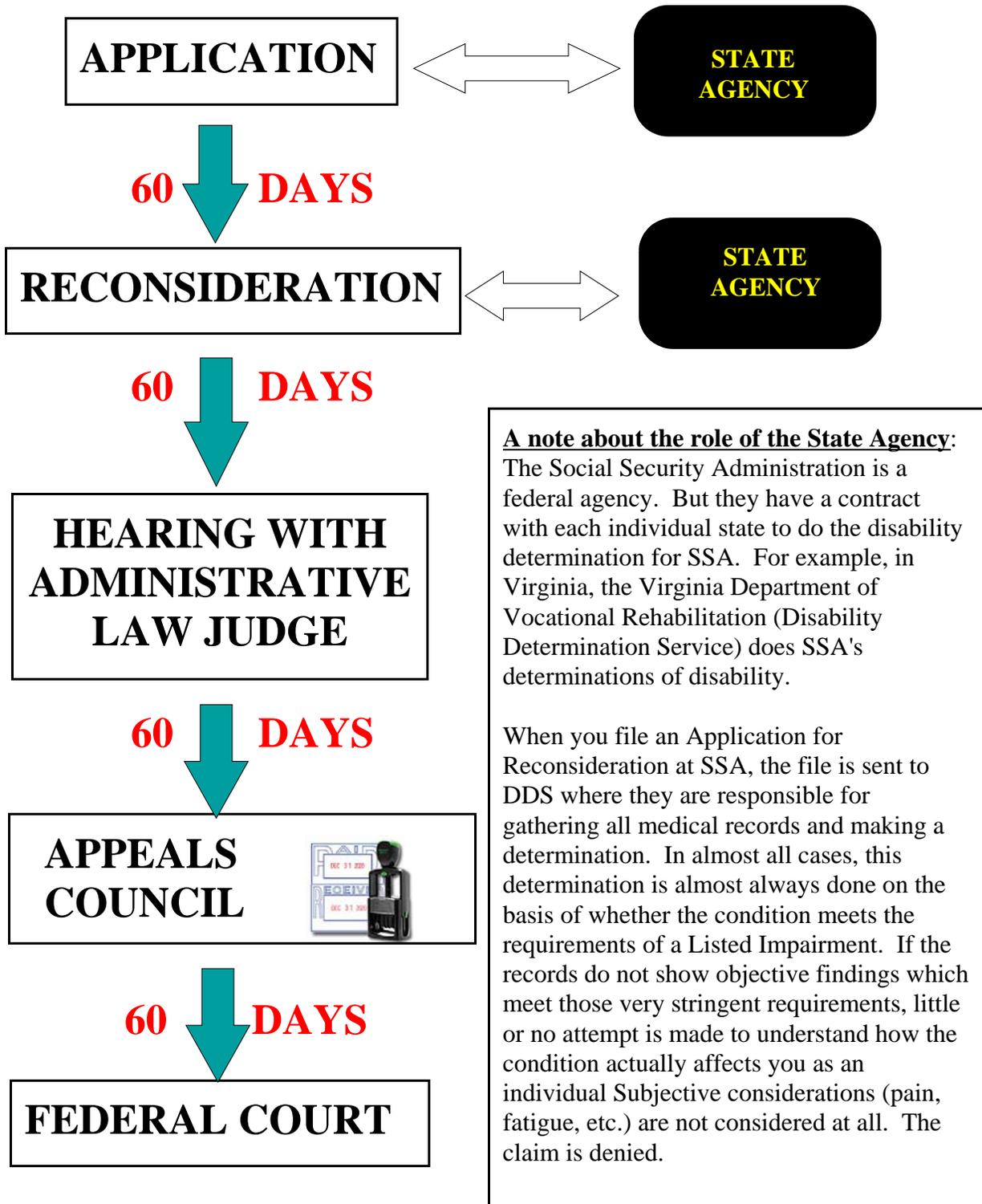
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# I. THE APPLICATION AND REVIEW PROCESS



**STANDARD OF REVIEW (ALJ HEARING): PREPONDERANCE OF EVIDENCE**

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**SUBSTANTIAL EVIDENCE:** *Gayheart v. Comm'r of Soc. Sec.*, 710 F.3d 365, 375 (6th Cir., 2013).

## **II. SOCIAL SECURITY DISABILITY BENEFITS**

### **A. TYPES OF BENEFITS**

#### **1. TITLE II (*SOCIAL SECURITY*) - TECHNICAL REQUIREMENT:**

##### **a) Disability Insurance Benefits ("DIB")**

This is for disabled workers; i.e., people who have worked under the Social Security Act.<sup>1</sup> There are two requirements. The individual must be "**DISABLED**" (See, II.B., below). The individual must also be "**INSURED**" or "covered" under the Social Security Act.

The most important word in DIB is "**Insurance**". Whether people knew it or not, they have been taking out Insurance from SSA during their working lives. Like every other insurance in the world, the person has to pay for it. They do so by means of working - it's not really even the FICA that's taken out. Instead, SSA requires that individuals have earned a certain number of "**QUARTERS OF CREDIT**" ("QC's"). The QC is, in effect, the "premium" for having DIB.

##### **i) How to earn QC's**

A QC is earned by a W-2 wage earner by making a prescribed minimal amount in any given tax year. For example, in the mid-1970's it took \$50.00 to earn a QC. That amount has gone up slowly over the years. Here are the requirements for earning a QC over the last 15 years:

- |                    |                    |                  |
|--------------------|--------------------|------------------|
| • 2015: \$1,220.00 | • 2010: \$1,120.00 | • 2005: \$970.00 |
| • 2014: \$1,200.00 | • 2009: \$1,120.00 | • 2004: \$900.00 |
| • 2013: \$1,160.00 | • 2008: \$1,090.00 | • 2003: \$890.00 |
| • 2012: \$1,130.00 | • 2007: \$1,050.00 | • 2002: \$870.00 |
| • 2011: \$1,120.00 | • 2006: \$1,000.00 | • 2001: \$830.00 |

The Maximum Number of QC's anyone can earn in any given year is FOUR QC's.

Example: Joe made \$3,000.00 in 2013. Joe will be given credit for 2 QC's for 2013.

Example: Jill made \$50,000.00 in 2008. Jill will get credit for 4 QC's for 2008.

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<sup>1</sup>DIB is not for people who have worked - but have failed to pay taxes. SSA needs documentation that the individual has actually worked and the amounts they pay. This is done through the Internal Revenue Service and requires that a tax return be filed. Thus, DIB is not for people who have worked for cash and not reported it via tax returns. Also, to be covered for DIB, positive earnings must be reported. So DIB is also not for people who have been self-employed but their tax returns fail to show a profit year after year.

Whether it requires that the individual has actually paid any of the taxes - income or FICA - in not the subject of this training).

ii) Two Different Requirements for QC's in DIB

a) TOTAL QC'S REQUIRED IN A LIFETIME to gain Insured Status:

- *Age 31 or older: 40 QC's (TEN YEARS) in their lifetime.*
- *Age 21 - 30 - Special Rule - See, Appendix C*

b) OF THE TOTAL QC'S, AT LEAST 20 QC'S WERE EARNED IN LAST TEN YEARS. This is the *DATE LAST INSURED ("DLI")*.

This is not a problem normally. IN THESE CASES IT MAY BE HUGE because these cases involve disability (ceasing work) that commenced upwards of 10 - 15 years ago. Once a person stops working, they stop earning QC's. Eventually, the insured coverage "runs out". The rule of thumb is that Insured Coverage runs out FIVE YEARS after work stops (5 years of earning no QC's).

This does not mean the person loses. This is nothing more than a rule one might find in other, different types of insurance cases; THE LOSS MUST HAVE OCCURRED WHILE THE INSURANCE WAS STILL IN FORCE.

WATCH FOR SITUATIONS WHERE THE DLI IS SOMETIME IN THE PAST!!!!!!!!!!!!!! **THE CLAIMANT MUST ESTABLISH THAT DISABILITY BEGAN NO LATER THAN THE DLI.** EVIDENCE AFTER THE DLI MAY BE REGARDED AS IRRELEVANT OR NEARLY IRRELEVANT - particularly by ALJ's that are at least mildly adversarial or just plain uninformed.<sup>2</sup>

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<sup>2</sup>Some ALJ's will take a hard line - that any post-DLI evidence cannot be considered. That is clear error:

Evidence and diagnoses compiled years later are admissible and relevant to a determination of disability before the expiration of the individual's insured status if that evidence relates back to the relevant period. Basinger v. Heckler, 725 F.2d 1166, 1169-70 (8th Cir.1984). See also Higgs v. Bowen, 880 F.2d 860, 862-63 (6th Cir.1988). Therefore, to the extent that the materials submitted to the ALJ and the Appeals Council relate back to the period prior to June 30, 1979, they are relevant and must be considered.

Aplet v. Secretary of Health and Human Services, 980 F.2d 729 (6th Cir. 1992). Retrospective *opinion* evidence by doctors - even if they did not treat the claimant prior to the DLI - are also to be considered. See Bird v. Comm'r of SSA, 699 F.3d 337, 341-342 (4th Cir. 2012):

Medical evaluations made after a claimant's insured status has expired are not automatically barred from consideration and may be relevant to prove a disability arising before the claimant's DLI. Wooldridge v. Bowen, 816 F.2d 157, 160 (4th Cir.1987). In Moore v. Finch, 418 F.2d 1224, 1226 (4th Cir.1969), we held that an SSA examiner improperly failed to give retrospective consideration to evidence created between six and seven years after the claimant's DLI, because the evidence could be "reflective of a possible earlier and progressive degeneration."

**b. Disabled Widow's Benefits ("DWB")**

These benefits are typically for the spouse who did not work very much - if at all. In some households both spouses worked but the one who died first had a better work history and greater earnings over a long period of time. Had the spouse lived, their benefit would have been larger than the benefit of the surviving spouse. In this instance, the Widow/Widower can file for Disabled Widow/er's Benefits as well as their own DIB. The disabled person receives the larger of the two - not both.

The requirements are:

(1) The Widow/er must be between the ages of 50 and 60; and,

(2) The Widow/er's disability has a slightly different variation on the **DLI**. The onset of disability must have commenced during the following period:

- BEGINNING DATE: (LATEST OF)  
WAGE EARNER'S DEATH: \_\_\_\_\_  
LAST ENT. TO MOTHER'S/FATHER'S BENEFITS: \_\_\_\_\_<sup>3</sup>
- END DATE (EARLIEST OF)  
MONTH PRIOR TO AGE 60: \_\_\_\_\_  
84 MONTHS + BEGIN DATE: \_\_\_\_\_

**c. Disabled Adult Child ("DAC")**

Any person who became disabled prior to their 22nd birthday can receive benefits based on the Social Security Earnings record of a parent as long as the parent is (1) Dead, or (2) receiving benefits under Social Security for their own Disability or Retirement.

The **DLI** for this is the child's 22nd birthday.

**2. TITLE XVI (SUPPLEMENTAL SECURITY INCOME ("SSI")) - TECHNICAL REQUIREMENTS**

**a) Income limits**

- No more than \$733.00 per month.
- All other "income" is deducted from the monthly grant (calculated on a quarterly basis).
- Spouse's income counts - not dollar for dollar.

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<sup>3</sup>If the Worker dies and leaves minor children, the surviving spouse *might* be eligible to receive benefits as being the Surviving Parent In Care of Minor Child(ren); called "Mother's" or "Father's" benefits. The benefit ceases to the parent when the last of the minor children turns 16.

- DIB, DWB, DAC counts dollar-for-dollar.
- Food stamps do not count.
- Free room and board<sup>4</sup> counts as \$244.00 per month - leaving maximum monthly benefit of \$489.00 per month.

**b) Resource limits**

- Resources cannot exceed \$2,000.00
- "Resources" are things that can be converted to cash or are already liquid; i.e.:
  - Savings and checking accounts;
  - Second car (the first car is excluded - no matter how valuable);
  - The home they own/are buying is excluded as well as all the contiguous land it sits on.
  - Separate plots of land other than the land the residence sits on are Resources - even if co-owned.

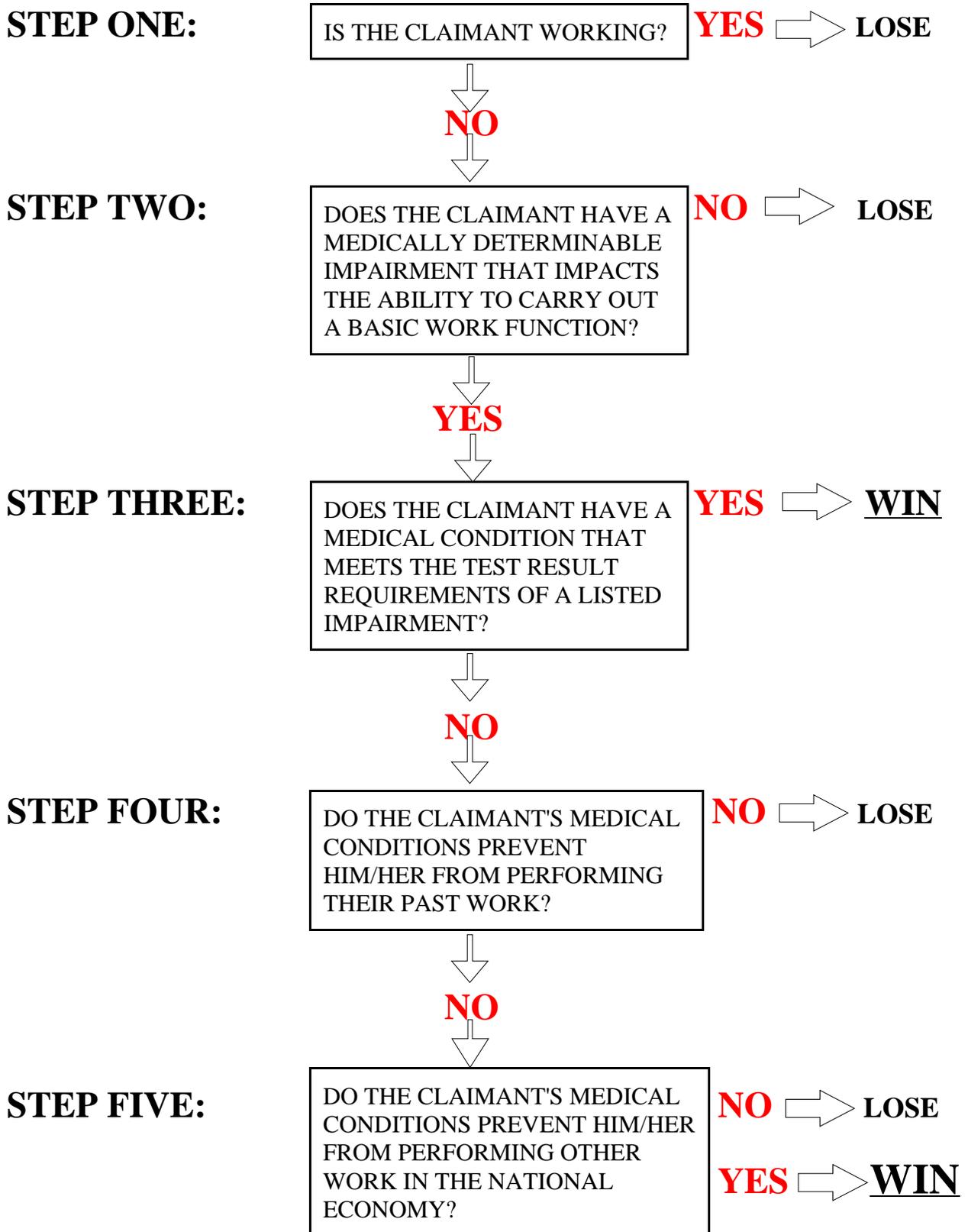
**c) Cannot be institutionalized**

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<sup>4</sup>Free room and board means that the individual is not legally responsible for mortgage or lease; i.e., their name is not on the bottom line. The typical scenario is that the individual has moved back in with a parent or relative and given a room. Arrangements with relatives; i.e., a written promise to repay if they win their SSI, are highly suspect with SSA.

## B. DEFINITION OF DISABILITY

The 5-Step Sequential Evaluation: The Social Security regulations provide for a uniform way of analyzing each and every disability claim. This is called the **FIVE-STEP SEQUENTIAL EVALUATION**. 20 C.F.R. §§404.1520(a)(4)(i) - (v), 416.920(a)(4)(i) - (v).



## 1. SUBSTANTIAL GAINFUL ACTIVITY ("SGA")

Are you working? "Working" is measured only in terms of the amount of money you make. For 2015, if you make less than \$1,090.00 per month, you are not "working". There is a temptation to purposely keep earnings under the \$1,090.00 per month limit. This is an enormous mistake. Contrary to popular belief, SSA are not idiots. They can tell the difference between someone who is doing the best they can and someone who is trying to manipulate the system.

- See **APPENDIX A** - SGA Levels for the years 2000 - 2015

Are you allowed to even try to work during the pendency of the claim? YES. SSA does not want to discourage people from working.

- If the work is "SUCCESSFUL": The claimant loses any claim for benefits from the point the work began. A claim for benefits during the period before work commenced is still on the table as long as that period is greater than 12 months.

- "SUCCESS" is defined as being able to work at SGA levels for at least SIX MONTHS.

- "UNSUCCESSFUL WORK ATTEMPT" (20 C.F.R. §404.1574(c)): "Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, your impairment forced you to stop working or to reduce the amount of work you do so that your earnings from such work fall below the substantial gainful activity earnings level" AND:

- There is at least a 30-day break in work activity due to health reasons prior to the attempt to work; AND

- the work attempt lasted less than 3 months; OR
- the work attempt lasted more than 3 months but less than 6 months; AND at least one of the following:
  - frequent absences due to health (statement from employer);
  - work was unsatisfactory (statement from employer);
  - work was satisfactory until special accommodations were removed (statement from employer);
  - work was during temporary remission (statement from M.D.)

## 2. SEVERE IMPAIRMENT

Do you have a medical impairment? This has been characterized as a *de minimis* threshold step. Sometimes, people are not working only because of non-medical factors. This step is designed only to rule these people out. Almost anything qualifies as a medical impairment

- as long as it has more than a minimal impact on the ability to do any single basic work activity (walking, standing, sitting, lifting, gripping, bending, manipulating, seeing, hearing, talking, understanding, thinking, remembering, etc.).

...the second stage severity inquiry, properly interpreted, serves the goal of administrative efficiency by allowing the Secretary to screen out totally groundless claims...

...In addition, an overly stringent interpretation of the severity requirement would violate the statutory standard for disability by precluding administrative determination of the crucial statutory question: whether, in fact, the impairment prevents the claimant from working, given the claimant's age, education and experience. We therefore agree with the Eleventh Circuit's view in Brady [v. Heckler], 724 F.2d 914, 919 (11th Cir.1984)] that in order to ensure consistency with statutory disability standards, an impairment can be considered as not severe, and the application rejected at the second stage of the sequential evaluation process, only if the impairment is a "slight abnormality which has such a minimal effect on the individual that it would not be expected to interfere with the individual's ability to work, irrespective of age, education and work experience." 724 F.2d at 920. Accord Evans v. Heckler, 734 F.2d 1012, 1014 (4th Cir.1984).

Farris v. Secretary of Health and Human Services, 773 F.2d 85, 89 - 90 (6th Cir. 1985)

### **3. LISTING OF IMPAIRMENTS**

Does your condition MEET<sup>5</sup> the requirements of Social Security's screening criteria - called **LISTED IMPAIRMENTS**? The complete "List" of 116 conditions is found at 20 C.F.R. §404, Subpart P, Appendix 1, Part A (Adults). The purpose of this step is to identify any medical condition which is so severe that it would, without any doubt or question (even by the most conservative of judgments), prevent a person from working in any capacity. Examples would include paralysis, kidney transplants and complete loss of vision.

Each of these Listed Impairments is defined by clinical test results or similar objective, measurable considerations. Merely having the diagnosis is not enough. If, a person with the applicable Listed Impairment is able to document all the requirements of the Listed Impairment, that person is presumptively unable to work and the analysis of disability terminates at that point with a favorable determination.

- See **APPENDIX B** - Examples of Listed Impairments

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<sup>5</sup>If the person's medical evidence does not satisfy each and every criteria, the evidence may nonetheless **EQUAL IN SEVERITY** the requirements of a Listed Impairment. This concept is beyond the scope of this training. It requires an Administrative Law Judge to obtain the input of a MEDICAL EXPERT to make such a determination.

#### **4. PAST RELEVANT WORK**

Can you perform your past relevant work? If the individual is able to perform the requirements of any type of work that was done in the last 15 years, the person would, obviously, be able to work. Past Relevant Work (PRW) is any work that was done:

- Within the 15 years leading up to the earlier of (a) onset of disability, or (b) DLI; and,
- Earned SGA levels for that year; and,
- Performed long enough to learn to do it proficiently well.

Example: Sally became disabled on January 1, 2014. She worked as a medical transcriptionist from October, 2013 to December, 2013 making \$57,000.00. This is not part of Sally's PRW because she did not do the job long enough to learn to do it proficiently. The job of medical transcriptionist takes 6 months to 1 year to learn to do well according to the United States Department of Labor *Dictionary of Occupational Titles*.

Example: Joe became unable to work on January 1, 2014. Between 2010 and 2012 he earned somewhere between \$5,000.00 and \$9,000.00 per year as a laborer for a construction company. This is not part of his past relevant work because he never did the job at levels of Substantial Gainful Activity for any of those years.

Example: Eric became unable to work on January 1, 2014. He earned \$13,000.00 per year working 20 hours a week as a sedentary sales representative for a manufacturing company between 2010 and 2013. This is part of Eric's PRW. It doesn't make any difference that the work was part-time and the ALJ can *potentially* find that Eric can return to that part-time work. Social Security Ruling 96-8p (fn. 2). Most ALJ's do not know this rule and base a decision about a person's ability to perform PRW on the assumption that the individual must be found as being capable of full-time work. If the ALJ were to find that Eric can work 20 hours a week at a sedentary level, the claim could be correctly denied.

#### **5. OTHER WORK IN THE NATIONAL ECONOMY EXISTING IN SIGNIFICANT NUMBERS**

Can you perform any other type of work in the national economy? If the person has survived the first four Steps of the analysis, the burden of proof switches to the government to show that other work exists in significant numbers in the regional or national economy which an individual could perform. Rabbers v. Commissioner of SSA, 582 F.3d 647, 652 (6th Cir. 2009). In making this determination, the government must consider four factors. 42 U.S.C. §423(d)(2)(A):

- 1) The person's remaining physical, mental and other abilities. This is called the "**RESIDUAL FUNCTIONAL CAPACITY**" (**RFC**).

2) The person's education: The more education a person has, the more possibility there would be that the person could adjust to other types of work they have never done before. In practice, however, the only consideration is whether the person is illiterate.

3) The person's skills acquired in previous work. Someone who dug ditches all their life is not going to have as many vocational possibilities as someone who has worked with computers, has technical knowledge through previous work or has learned to do things with particular physical/mental facility. On the other hand, it is often true that the person's physical or mental limitations prevent them from using whatever skills they have acquired over their lifetime. For example, someone with Multiple Sclerosis who had worked as a skilled carpenter may have very good skills but is unable to use their hands or arms in a lesser, sedentary capacity. Thus, their skills are of no use.

4) Age: As a person ages, their ability to adapt to other types of work theoretically deteriorates. This is codification of "you can't teach an old dog new tricks". For anyone under 50, this has no applicability. However, for someone 50 - 54 years old, if they are limited to seated types of work (problems with walking/standing), their age would be deemed to eliminate the ability to adjust to seated work. If a person is 55 or over and is limited to work with little or no lifting (even if on their feet all day), their age would also eliminate all work. The sole exception to these rules is if they have skills which would allow them to do such work.

#### a) **Meeting the Commissioner's Burden of Proof - Grid Regulations**

SSA has promulgated a set of rules which incorporates each of these factors into the "Medical-Vocational Guidelines" (**GRID REGULATIONS**) or **GRIDS**. For each combination and permutation of the four factors, SSA takes administrative notice that jobs either do or do not exist which that person can perform.

- See **APPENDIX C - GRID REGULATIONS FOR LIGHT AND SEDENTARY RFC**

The Grid Regulations provide:

- 17 different scenarios where the person is deemed "Disabled"
- 65 different scenarios where the person is deemed "Not Disabled".
- Under the age of 50
  - 1 scenario where the person is deemed "Disabled"
  - 26 scenarios where the person is deemed "Not Disabled".

While there are, indeed, 17 different scenarios where the GRIDS work to the advantage of the Client, the GRIDS, usually don't help.

### **b) Getting out of the Grids - Non-exertional limitations**

As a creation of "administrative notice", the ALJ is bound strictly by the exact facts that underlie any individual GRID RULE.

It should be emphasized that the grid is only used when the components of the grid precisely match the characteristics of the claimant. Thus, the only role the guidelines play is to take administrative notice of the availability of jobs, or lack thereof, for claimants whose abilities are accurately described by the grid. Of course, if the claimant's characteristics do not fit the grid pattern, then, just as before, expert testimony would be required to satisfy the Secretary's burden of proof regarding the availability of jobs which this particular claimant can exertionally handle.

Kirk v. Secretary of Health and Human Services, 667 F.2d 524, 531 (6th Cir. 1981). One of the four factors which the GRID notices is the individual's RFC. Yet, that RFC is only defined by a very limited set of physical considerations - Walking, Standing, Sitting and Lifting. These are called EXERTIONAL demands. If the individual has NON-EXERTIONAL limitations, then the GRID RULE DOES NOT APPLY

The Medical-Vocational Guidelines take account only of a claimant's "exertional" impairment; that is, "an impairment which manifests itself by limitations in meeting the strength requirements of jobs[.]" 20 C.F.R. Part 404, Subpt. P, App. 2 Sec. 200.00(e). Where a claimant suffers from an impairment that significantly diminishes his capacity to work, but does not manifest itself as a limitation on strength, for example, where a claimant suffers from a mental illness, see, e.g., Cole, 820 F.2d at 772; manipulative restrictions, see, e.g., Hurt v. Secretary of Health & Human Services, 816 F.2d 1141, 1143 (6th Cir. 1987); or heightened sensitivity to environmental contaminants, see, e.g., Shelman v. Heckler, 821 F.2d 316, 322 (6th Cir. 1987), rote application of the grid is inappropriate. Cole, 820 F.2d at 771; Hurt, 816 F.2d at 1143; Kimbrough v. Secretary of Health and Human Services, 801 F.2d 794, 796 (6th Cir.1986).

Abbott v. Sullivan, 905 F.2d 918, 926 (6th Cir. 1990).

If a claimant suffers from a nonexertional impairment that restricts his or her performance at the appropriate residual functional capacity level, the "grids" are inapplicable and the Secretary must rely on other evidence to carry his burden. 20 C.F.R. Pt. 404, Subpt. P, App. 2, Sec. 200.00(e) (1989). However, if an individual does not suffer from nonexertional impairments that restrict his or her performance at the appropriate residual functional capacity level, then the Secretary may obtain a directed conclusion of "not disabled" and may take administrative notice that jobs exist in the national economy that the claimant can perform

Cox v. Secretary of Health & Human Services, 902 F.2d 32, 34 (6th Cir. 1990).

## EXAMPLES OF NON-EXERTIONAL IMPAIRMENTS

- LIMITATIONS IN ABILITY TO MAINTAIN PACE
- LIMITATIONS IN ABILITY TO MAINTAIN PRODUCTION STANDARDS
- LIMITATIONS IN ABILITY TO MANIPULATE SMALL OBJECTS
- LIMITATIONS IN ABILITY TO SEE SMALL DETAILS
- LIMITATIONS IN ABILITY TO WORK AROUND MACHINERY OR HEIGHTS
- LIMITATIONS IN ABILITY TO BE EXPOSED TO PULMONARY IRRITANTS OR WEATHER/TEMPERATURE CONDITIONS
- LIMITATIONS IN ABILITY TO BE AROUND CO-WORKERS WITHOUT DISTRACTING THEM
- LIMITATIONS IN ABILITY TO ACCEPT CRITICISM AND/OR SUPERVISION
- LIMITATIONS IN ABILITY TO BEND AT THE WAIST
- LIMITATIONS IN ABILITY TO REACH IN SOME OR ALL DIRECTIONS
- LIMITATIONS IN ABILITY TO TURN THE HEAD IN SOME OR ALL DIRECTIONS

ALL THIS DOES IS GET YOU OUT OF THE GRIDS. But the ALJ can still establish that other work exists. This just cannot be done by administrative notice. Where these types of additional limitations exist - beyond the basic sitting, walking, standing and lifting limitations described by the definitions of Sedentary, Light, Medium and Heavy work - the ALJ cannot meet their Burden of Proof by simply relying on a Grid Rule. The ALJ must call a Vocational Expert who is better able to assimilate all the limitations (via a Hypothetical Question) into an analysis of whether other work does, indeed, exist which the claimant can still perform.

**c) Winning once you're out of the Grids - no full-time work capacity**

1) CANNOT WORK EIGHT-HOURS-PER-DAY, FIVE-DAYS-PER-WEEK AT ANY JOB: Social Security Ruling 96-8p:

Ordinarily, RFC is the individual's maximum remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis, and the RFC assessment must include a discussion of the individual's abilities on that basis. A "regular and continuing basis" means 8 hours a day, for 5 days a week, or an equivalent work schedule.

Also, see, Parish v. Califano, 642 F.2d 188, 192 - 193 (6th Cir. 1981):

The activity in which a claimant must be able to engage must not only be "gainful" but must also be "substantial". The determinative factor, therefore, is not how substantial the gain, but how substantial the activity, in which the claimant can be gainfully engaged.... "Substantial", as used in the Act, supra, is synonymous in the sense of belonging to the real nature of "activity" which a person can perform. It connotes "activity" as being real or actual, as opposed to transitory or apparent. It contains the idea of any "activity" which may be performed with some degree of regularity

**d) Winning once you're out of the Grids - Reduction of Occupational Base**

CLIENT'S VOCATIONAL PROFILE (AGE, EDUCATION, SKILLS, RFC) FALLS BETWEEN TWO COMPETING GRID RULES - BUT IT'S CLOSER TO THE FAVORABLE RULE THAN THE UNFAVORABLE RULE ("**REDUCTION OF OCCUPATIONAL BASE**")

***SEE MATERIALS UNDER CROSS EXAMINATION OF VOCATIONAL EXPERT***

### **III. PREPARING FOR HEARING - KNOW WHERE YOU'RE GOING**

#### **A. PREPARING THE CLIENT**

- Upon scheduling hearing - Pre-hearing conference letter to client
  - See *APPENDIX D* - Letters to Client
- Pre-hearing conference at least 4 - 6 weeks before hearing
  - Questions generated from pre-hearing letter
  - ALJ's procedure, demeanor and preferences
  - Theory of entitlement
  - Logistics on day of the hearing
  - Copy of Pre-hearing Brief to client

#### **B. PREPARING THE EVIDENCE**

- Get unworked Case Docs or Exhibit File from ERE as soon as possible
- Submit all missing medical records - favorable or unfavorable **AT LEAST FIVE BUSINESS DAYS BEFORE HEARING**
- Particularized Medical Reports
  - Deposition/Recorded Statement
  - Doctors' letters
  - RFC or other forms
    - See *APPENDIX E* - Forms for doctors
- Third Party Witness Statements
- Pharmacy Printouts
- List of Current Medications

### **C. PREPARING THE VOCATIONAL EXPERT**

- See *APPENDIX F* - Vocational Profile

### **D. PREPARING THE LAWYER**

- See *APPENDIX G* - Sample Trial Memoranda

### **E. PREPARING THE ALJ**

- Pre-hearing Brief AT LEAST TWO BUSINESS DAYS BEFORE THE HEARING
- See *APPENDIX H* - Sample Pre-hearing Brief

## **APPENDIX A**

### **SUBSTANTIAL GAINFUL ACTIVITY (2000 - 2015)**

● 2015:	\$1,090.00
● 2014:	\$1,070.00
● 2013:	\$1,040.00
● 2012:	\$1,010.00
● 2011:	\$1,000.00
● 2010:	\$1,000.00
● 2009:	\$ 980.00
● 2008:	\$ 940.00
● 2007:	\$ 900.00
● 2006:	\$ 860.00
● 2005:	\$ 830.00
● 2004:	\$ 810.00
● 2003:	\$ 800.00
● 2002:	\$ 780.00
● 2001:	\$ 740.00
● 2000:	\$ 700.00

## APPENDIX B

### EXAMPLES OF LISTED IMPAIRMENTS

- LISTING 1.04 (BACK PROBLEMS)

**1.04 Disorders of the spine** (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

**1.00B2b. What we mean by inability to ambulate effectively.**

(1) Definition. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.)

(2) To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

### 3.02 Chronic pulmonary insufficiency

A. Chronic obstructive pulmonary disease due to any cause, with the FEV1 equal to or less than the values specified in table I corresponding to the person's height without shoes. (In cases of marked spinal deformity, see 3.00E.);

<b>TABLE I</b>		
<b>HEIGHT (no shoes)</b>		<b>FEV(1) Equal to or less than (L, BPS)</b>
centimeters	inches	
154 or less	60 or less	1.05
155-160	61 - 63	1.15
161-165	64 - 65	1.25
166-170	66 - 67	1.35
171-175	68 - 69	1.45
176-180	70 - 71	1.55
181 or more	72 or more	1.65

B. Chronic restrictive ventilatory disease, due to any cause, with the FVC equal to or less than the values specified in Table II (**TABLE OMITTED**) corresponding to the person's height without shoes. (In cases of marked spinal deformity, see 3.00E.);

C. Chronic impairment of gas exchange due to clinically documented pulmonary disease. With:

1. Single breath DLCO (see 3.00F1) less than 10.5 ml/min/mm Hg or less than 40 percent of the predicted normal value. (Predicted values must either be based on data obtained at the test site or published values from a laboratory using the same technique as the test site. The source of the predicted values should be reported. If they are not published, they should be submitted in the form of a table or nomogram); or
2. Arterial blood gas values of PO<sub>2</sub> and simultaneously determined PCO<sub>2</sub> measured while at rest (breathing room air, awake and sitting or standing) in a clinically stable condition on at least two occasions, three or more weeks apart within a 6-month period, equal to or less than the values specified in the applicable table III-A or III-B or III-C (**TABLES OMITTED**);
3. Arterial blood gas values of PO<sub>2</sub> and simultaneously determined PCO<sub>2</sub> during steady state exercise breathing room air (level of exercise equivalent to or less than 17.5 ml O<sub>2</sub> consumption/kg/min or 5 METs) equal to or less than the values specified in the applicable table III-A or III-B or III-C in 3.02 C2.

**12.04 Affective disorders:** Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
- b. Appetite disturbance with change in weight; or
- c. Sleep disturbance; or
- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or
- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions, or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

- a. Hyperactivity; or
- b. Pressure of speech; or
- c. Flight of ideas; or
- d. Inflated self-esteem; or
- e. Decreased need for sleep; or
- f. Easy distractibility; or
- g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
- h. Hallucinations, delusions or paranoid thinking; or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked<sup>6</sup> restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

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<sup>6</sup>**"MARKED"** means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively.

• **ACTIVITIES OF DAILY LIVING** include adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for grooming and hygiene, using telephones and directories, and using a post office. Assess the quality of these activities by their independence, appropriateness, effectiveness and sustainability and the extent to which the person is capable of initiating and participating in activities independent of supervision or direction. A "marked" impairment can exist even if a wide range of activities are done but there is serious difficulty in performing them without direct supervision or they are not done in a suitable manner or on a consistent, useful, routine basis or without undue interruptions or distractions.

• **SOCIAL FUNCTIONING** refers to capacity to interact independently, appropriately, effectively and on a sustained basis with other individuals. Impaired social functioning can be demonstrated by a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships or social isolation.

<sup>3</sup> **CONCENTRATION PERSISTENCE OR PACE** refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. Clinical tests assessing tasks requiring short-term memory or through tasks that must be completed within established time limits may be helpful; e.g., serial 7's, WAIS-III, etc. Strengths and weaknesses in areas of concentration and attention can be discussed in terms of ability to work at a consistent pace for acceptable periods of time and until tasks are completed over the course of an 8-hour day to achieve a goal or objective.

<sup>4</sup> **EPISODES OF DECOMPENSATION** refers to exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning. The term "repeated episodes of decompensation, each of extended duration" means 3 episodes within 1 year or an average of once every 4 months, each lasting for at least 2 weeks. Less frequent episodes of longer duration or more frequent episodes of shorter duration may be considered functionally equivalent to "repeated episodes of decompensation..."

## APPENDIX C

# GRID REGULATIONS

## Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines

Sec.

200.00 Introduction.

201.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).

202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).

203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).

204.00 Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).

200.00 *Introduction.* (a) The following rules reflect the major functional and vocational patterns which are encountered in cases which cannot be evaluated on medical considerations alone, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (*i.e.*, age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. However, each of these findings of fact is subject to rebuttal and the individual may present evidence to refute such findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a conclusion of disabled or not disabled. In any instance where a rule does not apply, full consideration must be given to all of the relevant facts of the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations.

(b) The existence of jobs in the national economy is reflected in the "Decisions" shown in the rules; *i.e.*, in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist throughout the national economy at the various functional levels (sedentary, light, medium, heavy, and very heavy) as supported by the "Dictionary of Occupational Titles" and the "Occupational Outlook Handbook," published by the Department of Labor; the "County Business Patterns" and "Census Surveys" published by the Bureau of the Census;

and occupational surveys of light and sedentary jobs prepared for the Social Security Administration by various State employment agencies. Thus, when all factors coincide with the criteria of a rule, the existence of such jobs is established. However, the existence of such jobs for individuals whose remaining functional capacity or other factors do not coincide with the criteria of a rule must be further considered in terms of what kinds of jobs or types of work may be either additionally indicated or precluded.

(c) In the application of the rules, the individual's residual functional capacity (*i.e.*, the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined. When assessing the person's residual functional capacity, we consider his or her symptoms (such as pain), signs, and laboratory findings together with other evidence we obtain.

(d) The correct disability decision (*i.e.*, on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. If an individual's specific profile is not listed within this appendix 2, a conclusion of disabled or not disabled is not directed. Thus, for example, an individual's ability to engage in substantial gainful work where his or her residual functional capacity falls between the ranges of work indicated in the rules (e.g., the individual who can perform more than light but less than medium work), is decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in this appendix 2. These rules represent various combinations of exertional capabilities, age, education and work experience and also provide an overall structure for evaluation of those cases in which the judgments as to each factor do not coincide with those of any specific rule. Thus, when the necessary judgments have been made as to each factor and it is found that no specific rule applies, the rules still provide guidance for decisionmaking, such as in cases involving combinations of impairments. For example, if strength limitations resulting from an individual's impairment(s) considered with the judgments made as to the individual's age, education and work experience correspond to (or closely approximate) the factors of a particular rule, the adjudicator then has a frame of reference for considering the jobs or types of work precluded by other, nonexertional impairments in terms of numbers of jobs remaining for a particular individual.

(e) Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. In addition, some impairments may result solely in postural and manipulative limitations or environmental restrictions. Environmental restrictions are those restrictions which result in inability to tolerate some physical feature(s) of work settings that occur in certain industries or types of work, e.g., an inability to tolerate dust or fumes.

(1) In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in

this appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments.

(2) However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules in this subpart are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone and, if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Also, in these combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules in this appendix 2, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

*201.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).* (a) Most sedentary occupations fall within the skilled, semi-skilled, professional, administrative, technical, clerical, and benchwork classifications. Approximately 200 separate unskilled sedentary occupations can be identified, each representing numerous jobs in the national economy. Approximately 85 percent of these jobs are in the machine trades and benchwork occupational categories. These jobs (unskilled sedentary occupations) may be performed after a short demonstration or within 30 days.

(b) These unskilled sedentary occupations are standard within the industries in which they exist. While sedentary work represents a significantly restricted range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity.

(c) Vocational adjustment to sedentary work may be expected where the individual has special skills or experience relevant to sedentary work or where age and basic educational competences provide sufficient occupational mobility to adapt to the major segment of unskilled sedentary work. Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

(d) The adversity of functional restrictions to sedentary work at advanced age (55 and over) for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a finding of disabled in the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work. Advanced age and a history of unskilled work or no work experience would ordinarily offset any vocational advantages that might accrue by

reason of any remote past education, whether it is more or less than limited education.

(e) The presence of acquired skills that are readily transferable to a significant range of skilled work within an individual's residual functional capacity would ordinarily warrant a finding of ability to engage in substantial gainful activity regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled ordinarily obtains. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For this age group, even a high school education or more (ordinarily completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education.

(h)(1) The term *younger individual* is used to denote an individual age 18 through 49. For individuals who are age 45-49, age is a less advantageous factor for making an adjustment to other work than for those who are age 18-44. Accordingly, a finding of "disabled" is warranted for individuals age 45-49 who:

- (i) Are restricted to sedentary work,
- (ii) Are unskilled or have no transferable skills,
- (iii) Have no past relevant work or can no longer perform past relevant work, and
- (iv) Are unable to communicate in English, or are able to speak and understand English but are unable to read or write in English.

(2) For individuals who are under age 45, age is a more advantageous factor for making an adjustment to other work. It is usually not a significant factor in limiting such individuals' ability to make an adjustment to other work, including an adjustment to unskilled sedentary work, even when the individuals are unable to communicate in English or are illiterate in English.

(3) Nevertheless, a decision of "disabled" may be appropriate for some individuals under age 45 (or individuals age 45-49 for whom rule 201.17 does not direct a decision of disabled) who do not have the ability to perform a full range of sedentary work. However, the inability to perform a full range of sedentary work does not necessarily equate with a finding of "disabled." Whether an individual will be able to make an adjustment to other work requires an adjudicative assessment of factors such as the type and extent of the individual's limitations or restrictions and the extent of the erosion of the occupational base. It requires an individualized determination that considers the impact of the limitations or

restrictions on the number of sedentary, unskilled occupations or the total number of jobs to which the individual may be able to adjust, considering his or her age, education and work experience, including any transferable skills or education providing for direct entry into skilled work.

(4) "Sedentary work" represents a significantly restricted range of work, and individuals with a maximum sustained work capability limited to sedentary work have very serious functional limitations. Therefore, as with any case, a finding that an individual is limited to less than the full range of sedentary work will be based on careful consideration of the evidence of the individual's medical impairment(s) and the limitations and restrictions attributable to it. Such evidence must support the finding that the individual's residual functional capacity is limited to less than the full range of sedentary work.

(i) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals age 18-44 even if they are illiterate or unable to communicate in English.

**Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s)**

Rule	Age	Education	Previous work experience	Decision
201.01	Advanced age	Limited or less	Unskilled or none	Disabled
201.02	.....do	.....do	Skilled or semiskilled—skills not transferable <sup>1</sup>	Do.
201.03	.....do	.....do	Skilled or semiskilled—skills transferable <sup>1</sup>	Not disabled
201.04	.....do	High school graduate or more—does not provide for direct entry into skilled work <sup>2</sup>	Unskilled or none	Disabled
201.05	.....do	High school graduate or more—provides for direct entry into skilled work <sup>2</sup>	.....do	Not disabled
201.06	.....do	High school graduate or more—does not provide for direct entry into skilled work <sup>2</sup>	Skilled or semiskilled—skills not transferable <sup>1</sup>	Disabled
201.07	.....do	.....do	Skilled or semiskilled—skills transferable <sup>1</sup>	Not disabled
201.08	.....do	High school graduate or more—provides for direct entry into skilled work <sup>2</sup>	Skilled or semiskilled—skills not transferable <sup>1</sup>	Do.
	Closely			

201.09	approaching advanced age	Limited or less	Unskilled or none	Disabled
201.10	.....do	.....do	Skilled or semiskilled—skills not transferable	Do.
201.11	.....do	.....do	Skilled or semiskilled—skills transferable	Not disabled
201.12	.....do	High school graduate or more—does not provide for direct entry into skilled work <sup>3</sup>	Unskilled or none	Disabled
201.13	.....do	High school graduate or more—provides for direct entry into skilled work <sup>3</sup>	.....do	Not disabled
201.14	.....do	High school graduate or more—does not provide for direct entry into skilled work <sup>3</sup>	Skilled or semiskilled—skills not transferable	Disabled
201.15	.....do	.....do	Skilled or semiskilled—skills transferable	Not disabled
201.16	.....do	High school graduate or more—provides for direct entry into skilled work <sup>3</sup>	Skilled or semiskilled—skills not transferable	Do.
201.17	Younger individual age 45-49	Illiterate or unable to communicate in English	Unskilled or none	Disabled
201.18	.....do	Limited or less—at least literate and able to communicate in English	.....do	Not disabled
201.19	.....do	Limited or less	Skilled or semiskilled—skills not transferable	Do.
201.20	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
201.21	.....do	High school graduate or more	Skilled or semiskilled—skills not transferable	Do.
201.22	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
201.23	Younger individual age 18-44	Illiterate or unable to communicate in English	Unskilled or none	Do. <sup>4</sup>
201.24	.....do	Limited or less—at least literate and able to communicate in English	.....do	Do. <sup>4</sup>
201.25	.....do	Limited or less	Skilled or semiskilled—skills not transferable	Do. <sup>4</sup>
201.26	.....do	.....do	Skilled or semiskilled—skills transferable	Do. <sup>4</sup>
201.27	.....do	High school graduate or more	Unskilled or none	Do. <sup>4</sup>

201.28	.....do	.....do	Skilled or semiskilled—skills not transferable	Do. <sup>4</sup>
201.29	.....do	.....do	Skilled or semiskilled—skills transferable	Do. <sup>4</sup>

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (*i.e.*, closely approaching advanced age, 50-54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

(e) The presence of acquired skills that are readily transferable to a significant range of semi-skilled or skilled work within an individual's residual functional capacity would ordinarily warrant a finding of not disabled regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) For a finding of transferability of skills to light work for persons of advanced age who are closely approaching retirement age (age 60 or older), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things

(rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18-49) even if illiterate or unable to communicate in English.

**Table No. 2—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Light Work as a Result of Severe Medically Determinable Impairment(s)**

<b>Rule</b>	<b>Age</b>	<b>Education</b>	<b>Previous work experience</b>	<b>Decision</b>
202.01	Advanced age	Limited or less	Unskilled or none	Disabled.
202.02	.....do	.....do	Skilled or semiskilled—skills not transferable	Do.
202.03	.....do	.....do	Skilled or semiskilled—skills transferable <sup>1</sup>	Not disabled.
202.04	.....do	High school graduate or more—does not provide for direct entry into skilled work <sup>2</sup>	Unskilled or none	Disabled.
202.05	.....do	High school graduate or more—provides for direct entry into skilled work <sup>2</sup>	.....do	Not disabled.
202.06	.....do	High school graduate or more—does not provide for direct entry into skilled work <sup>2</sup>	Skilled or semiskilled—skills not transferable	Disabled.
202.07	.....do	.....do	Skilled or semiskilled—skills transferable <sup>2</sup>	Not disabled.
202.08	.....do	High school graduate or more—provides for direct entry into skilled work <sup>2</sup>	Skilled or semiskilled—skills not transferable	Do.
202.09	Closely approaching advanced age	Illiterate or unable to communicate in English	Unskilled or none	Disabled.
202.10	.....do	Limited or less—at least literate and able to communicate in English	.....do	Not disabled.
202.11	.....do	Limited or less	Skilled or semiskilled—skills not transferable	Do.
202.12	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
202.13	.....do	High school graduate or more	Unskilled or none	Do.
202.14	.....do	.....do	Skilled or semiskilled—skills not transferable	Do.
			Skilled or	

202.15	.....do	.....do	semiskilled—skills transferable	Do.
202.16	Younger individual	Illiterate or unable to communicate in English	Unskilled or none	Do.
202.17	.....do	Limited or less—at least literate and able to communicate in English	.....do	Do.
202.18	.....do	Limited or less	Skilled or semiskilled—skills not transferable	Do.
202.19	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
202.20	.....do	High school graduate or more	Unskilled or none	Do.
202.21	.....do	.....do	Skilled or semiskilled—skills not transferable	Do.
202.22	.....do	.....do	Skilled or semiskilled—skills transferable	Do.

203.00 *Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform medium work includes the functional capacity to perform sedentary, light, and medium work. Approximately 2,500 separate sedentary, light, and medium occupations can be identified, each occupation representing numerous jobs in the national economy which do not require skills or previous experience and which can be performed after a short demonstration or within 30 days.

(b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled level that a finding of disabled is ordinarily not warranted in cases where a severely impaired person retains the functional capacity to perform medium work. Even the adversity of advanced age (55 or over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work. However, we will find that a person who (1) has a marginal education, (2) has work experience of 35 years or more doing only arduous unskilled physical labor, (3) is not working, and (4) is no longer able to do this kind of work because of a severe impairment(s) is disabled, even though the person is able to do medium work. (See § 404.1562(a) in this subpart and § 416.962(a) in subpart I of part 416.)

(c) However, the absence of any relevant work experience becomes a more significant adversity for persons of advanced age (55 and over). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for persons closely approaching retirement age (60 or older) with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.

**Table No. 3—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Medium Work as a Result of Severe Medically Determinable Impairment(s)**

<b>Rule</b>	<b>Age</b>	<b>Education</b>	<b>Previous work experience</b>	<b>Decision</b>
203.01	Closely approaching retirement age	Marginal or none	Unskilled or none	Disabled.
203.02	.....do	Limited or less	None	Do.
203.03	.....do	Limited	Unskilled	Not disabled.
203.04	.....do	Limited or less	Skilled or semiskilled—skills not transferable	Do.
203.05	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
203.06	.....do	High school graduate or more	Unskilled or none	Do.
203.07	.....do	High school graduate or more—does not provide for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.
203.08	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
203.09	.....do	High school graduate or more—provides for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.
203.10	Advanced age	Limited or less	None	Disabled.
203.11	.....do	.....do	Unskilled	Not disabled.
203.12	.....do	.....do	Skilled or semiskilled—skills not transferable	Do.
203.13	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
203.14	.....do	High school graduate or more	Unskilled or none	Do.
203.15	.....do	High school graduate or more—does not provide for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.
203.16	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
203.17	.....do	High school graduate or more—provides for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.
203.18	Closely approaching advanced age	Limited or less	Unskilled or none	Do.
203.19	.....do	.....do	Skilled or semiskilled—skills not transferable	Do.
203.20	.....do	.....do	Skilled or semiskilled—skills transferable	Do.
203.21	.....do	High school graduate or more	Unskilled or none	Do.

203.21.....do	High school graduate or more	Unskilled or none	Do.	
203.22.....do	High school graduate or more—does not provide for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.	
203.23.....do	.....do	Skilled or semiskilled—skills transferable	Do.	
203.24.....do	High school graduate or more—provides for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.	
203.25	Younger individual	Limited or less	Unskilled or none	Do.
203.26.....do	.....do	Skilled or semiskilled—skills not transferable	Do.	
203.27.....do	.....do	Skilled or semiskilled—skills transferable	Do.	
203.28.....do	High school graduate or more	Unskilled or none	Do.	
203.29.....do	High school graduate or more—does not provide for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.	
203.30.....do	.....do	Skilled or semiskilled—skills transferable	Do.	
203.31.....do	High school graduate or more—provides for direct entry into skilled work	Skilled or semiskilled—skills not transferable	Do.	

**204.00 Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).** The residual functional capacity to perform heavy work or very heavy work includes the functional capability for work at the lesser functional levels as well, and represents substantial work capability for jobs in the national economy at all skill and physical demand levels. Individuals who retain the functional capacity to perform heavy work (or very heavy work) ordinarily will not have a severe impairment or will be able to do their past work—either of which would have already provided a basis for a decision of “not disabled”. Environmental restrictions ordinarily would not significantly affect the range of work existing in the national economy for individuals with the physical capability for heavy work (or very heavy work). Thus an impairment which does not preclude heavy work (or very heavy work) would not ordinarily be the primary reason for unemployment, and generally is sufficient for a finding of not disabled, even though age, education, and skill level of prior work experience may be considered adverse.

[45 FR 55584, Aug. 20, 1980, as amended at 56 FR 57944, Nov. 14, 1991; 68 FR 51164, Aug. 26, 2003; 73 FR 64197, Oct. 29, 2008]

**APPENDIX D**

**PRE-HEARING LETTERS AND FORMS TO CLIENT**

**BRUCE K. BILLMAN**

ATTORNEY AT LAW  
1109 Heatherstone Dr.  
Fredericksburg, Virginia 22407  
(540) 710-1001  
(800) 371-2906  
[www.socialsecurityesq.com](http://www.socialsecurityesq.com)

**Richmond Office**  
7400 Beaufont Springs Drive  
Suite 300, Room 301  
Richmond, Virginia 23225  
(804) 266-9131

**Reply Mail To:**  
1109 Heatherstone Dr.  
Fredericksburg, VA 22407  
(540) 710-7870 (telefax)

August 26, 2015

Ms. [REDACTED]  
[REDACTED]  
Fredericksburg VA 22408

**Re: Your Social Security Disability Case**

Dear Ms. [REDACTED]:

Finally! Your case has now been **scheduled to be heard on Thursday [REDACTED], 2015 at 10:30 am.** Your case will be heard by a Social Security Administrative Law Judge in the Richmond, VA Office of Disability Adjudication and Review located at:

Social Security Administration  
Office of Disability Adjudication and Review  
801 East Main Street, Fourth Floor  
Richmond, VA 23219  
(877) 405-3665

- **Making the trip to the hearing, parking, what to do when you get there and bad weather:** Please read the attached very carefully about this.
- **Paperwork from the judges' office:** The hearing office will be sending you paperwork. There will probably be several forms but I have already taken care of all of them myself. You only have to complete one of the forms you receive from them. **You can complete the "Acknowledgment Form" and return it to them in the envelope they sent you.**
- **The biggest question on your mind might be about what you would be expected to say at the hearing.** If you understand why you are having to go to a hearing, I think you'll know exactly what to say. The reason you are going to a hearing has to do with the things that really stop you from working. You are not disabled by a diagnosis. I don't care what your doctors call the condition. That does not stop you from working. Nor are you disabled by tests which have been conducted (x-rays, blood work, MRI's, EMG's, EEG's EKG's, heart catheterizations, CT scans, etc.). You aren't even disabled because your doctor may feel you are unable to work.

Rather, the thing that stops you from working is how you feel inside. Whether the doctor chooses to call it DDD or depression, determined by examination/testing or that

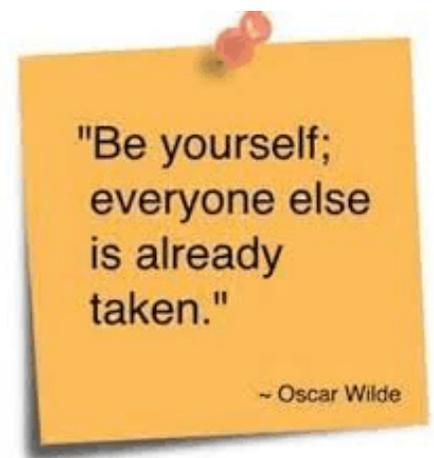
he/she has said you are "totally disabled" is completely beside the point for purposes of this particular hearing. Even if you had never seen any doctor in your entire life, you still would not be working at this point. Your disability -- at least from your standpoint -- has **only** to do with how you feel inside; whether it is pain, fatigue, shortness of breath, difficulty concentrating, problems with remembering or dealing with stress. These are all things that the judge cannot understand by looking at pieces of paper in a file. The judge has to see and hear you, first hand, to get a true sense of the degree of these problems and feelings.

Those feelings create limitations in your physical abilities (walking, standing, sitting, lifting, bending, stooping, pushing, pulling, coordinating use of hands, seeing, etc.). They also can create limitations in your mental abilities to work (remembering, concentrating, understanding, dealing with stress such as people, deadlines, quality requirements, etc.). This is what makes up the real world of work -- the ability to do these kinds of physical and mental activities on a sustained basis.

Don't get me wrong. The medical evidence is very important. But if we want to know what that medical evidence is about, we'll ask someone who is qualified to talk about it. In other words, we'll ask your doctor. We do not need you to testify about medical-type information. So you shouldn't expect very many questions from the judge about medical-related things such as what treatment you receive, what test results show, which doctors you have seen, etc. You really aren't qualified to talk about those kinds of things (unless you got your medical degree after I last talked to you!).

But you are uniquely qualified to talk about how you feel. That is what I want your answers to address at the hearing. Each and every answer you give at the hearing should give two bits of information: (1) how do you feel; and, (2) how does that limit your ability to do the physical and mental kinds of activities that the real world of work is made up of.

This requires you to talk at the hearing. It requires you to talk **in detail**. That is probably not what you expected. Most people think when they go to court they should keep their answers to a minimum. If you do that in this type of case, you are cutting your own throat. My experience over the last thirty years is that the less you say, the less the judge will have to go on in trying to figure out how you feel. If you don't talk, the judge will have to make a decision based more on the medical records than on you.



If you stop and think about that a moment, that's exactly how SSA made their first two decisions in your case and, clearly, that strategy didn't work. We're going to try something different at this hearing so, hopefully, we'll get a different result. You are going to be the star at this hearing -- not some medical record.

I hope you'll find the enclosed general Rules for Effective Testimony as useful towards preparing for our upcoming discussion of your testimony and the issues in your case. I don't want to waste a lot of time talking, generally, about what makes testimony good or bad. I would much rather talk with you about the specific issues in your case and how we will approach this hearing.

Besides thinking about what your testimony may be, I want you to know three other things about the hearing right now.

First, the hearing is private. It takes place in a room where there are no spectators. This privacy will hopefully encourage you to talk more candidly about your problems.

Second, there are no rules to the hearing. This is not going to be Kobe Bryant/Scott Peterson. Nobody is going to jump up and say, "You are not allowed to say that!" There are no formal, technical, picky rules. There are no rules, at all! Thus, no matter what you want to say or do (if you need to stand or walk around during the hearing, you can do so) it would be allowed. There is no rule to break. Hopefully, this lack of rules will also encourage you to talk more openly about your problems.

Finally, I will be there with you. My main purpose is to make sure that everything that needs to be said is said. If you are worried about forgetting to say something, I'm there to remind you. If you're worried about having left something unclear, I'm there to clear it up. If you're worried that you've said too much or have gotten off on the wrong track, I'm there to set you straight. You can rest assured that I will do so.

With all of this in mind, review the enclosed and be ready to discuss your case with me. By the time we're finished, you'll be ready to give the most effective testimony you can.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce K. Billman". The signature is fluid and cursive, with a large, looping initial "B" and "K".

BRUCE K. BILLMAN  
BKB/pdc

Enclosures - A/S

## MAKING THE TRIP TO YOUR HEARING, PARKING, WHAT TO DO WHEN YOU GET THERE AND BAD WEATHER CANCELLATIONS

- Where to go, how to get there and what to do when you get there. Keep this address for the judge's office and phone number handy! I've enclosed a map as to how you can get there.

- BE THERE THIRTY MINUTES AHEAD OF TIME: Do not get there extremely early. All you'll do is sit there and get nervous. Some judges are well-known for running behind. So if you get there very, very far in advance of your scheduled hearing time, you may have to sit there even longer. Thirty minutes will give us plenty of time to go over any last-minute details and review our strategy. If the judge wants to start early, we'll be able to do so.

- Begin now to arrange your transportation. Don't wait until the last minute. I will want to know what your arrangements to get to the hearing are when we meet to plan for your hearing (you should have received a letter about our pre-hearing conference appointment, as well). As you will see, below, it is my **very strong recommendation** that you get someone to drive you.

- Think about taking a test trip: If you are not familiar with where the judges' office is in Richmond or don't have a lot of experience with going to Richmond, you may want to take a test trip so you'll know what you'll be dealing with on the day of the hearing and things will be somewhat familiar to you or your driver. I'd suggest taking such a test trip on the same day of the week as your hearing date and during the time frame you will actually be traveling on the day of the hearing. If you need to be there by somewhere between 7:30 a.m. and 9:30 a.m., you may be worried about "rush hour". Don't worry!!! Rush hour in Richmond is almost non-existent. Sure, it's a big city and, yes, there is extra traffic during those times. But my experience (and I've done this trip well over 1,000 times) is that rush hour doesn't tend to add more than a very few minutes (less than ten, at worst) to the trip. Obviously, this doesn't account for any major wrecks, new construction, etc. But those are very few and far between.

- THERE IS NO PARKING: This is not a courthouse. It is a regular office building in the heart of downtown Richmond. There is no parking in the building (except for tenants). There is a small open-air parking lot off the alley in the back of the building. DO NOT USE THIS! It is now dedicated for use by people who work in the building. There is another open-air parking lot across the street from that lot (corner of 8th Street and Cary Street) which is available to the public. But it only has about 20 - 25 spaces and may well be full by the time you get there. It is also very expensive (\$4.00/hour with maximum of \$16.00).

- Parking Meters: Your best bet will be parking meters on the street.

Many of the meters do not open until 9:00 a.m. Watch carefully for posted signs about whether the meters in a particular block are open at 8:00 a.m. or 9:00 a.m. The meters take nickels, dimes and quarters. \$1.00 will get you two hours of parking. This may or may not be enough time. If the judge is running behind, you could be there slightly longer than two hours. You may need to have someone go move your car after two hours - another reason to have someone drive you.

***Richmond is very aggressive in enforcing parking meter violations.***

You are not allowed to "feed the meter". They mark your tires and can tell if someone has fed the meter. So, at the end of two hours, it is best to go move the car to another meter. I have been told (but haven't confirmed) that you are not allowed to simply move it one or two spaces - you must basically move it to another block.

- Once you get there: Because of the uncertainty of parking, it is best to have someone drive you to the hearing and drop you off at the curb.

***Make sure you have picture ID with you!!!!*** They can then go look for parking.

You will go into the lobby of the building and sign in with a security guard at the front desk. Take the elevator to the Fourth Floor. When you get off, you will see the door to the judges' office. I will meet you up there. There is a security guard there as well and you will need to present your picture ID. The guard will scan you with an electronic wand and look into any bag or purse you may be carrying.

- Cell phones: You can bring a cell phone but it must be turned off when we go into the hearing room.

- Bad Weather: During certain parts of the year, weather may force cancellation of the hearing:

(1) **If you don't think you can make it**: Do not take any unnecessary chances to get to your hearing. All hearings that are cancelled because of weather are immediately re-set. Be sure to realize that you might be able to get through any snow going down there. But snow would continue to fall!!! So you might have an impossible time getting home. Factor that into your thinking.

The minute you decide that you can't get to the hearing, you have to call me at the office immediately - even if that's 2:00 A.M. in the morning. If the phone is not answered, just leave a message. I should realize that weather will be a problem and I will check the messages on my voice mail. You will also be responsible for calling the Social Security judges' office (number, above) to notify them that you cannot make it to the hearing. They start answering their phones at 8:00 A.M. I would prefer that you call until you get an actual person at the judges' office - be sure to get their name.

(2) **If I don't think I can make it.** I will be coming from the Fredericksburg area and the snow situation may be somewhat different from where you are. I won't call you at 2:00 a.m. to let you know. But I may call you very early just to make sure you don't get on the road unnecessarily. If I can't make it and made the decision not to come, I am responsible for calling the judges' office and notifying them.

(3) **If the judge can't make it.** In all my years of going to Richmond, I've never had a hearing cancelled because a judge can't make it. But I would guess that if the judge can't make it, we wouldn't be able to make it, either. So, see (1) and (2), above.

## What Makes Testimony Effective?

**The words should come from you -- not from me:** It is very easy for an attorney to stick words into another person's mouth. This is usually done by "leading questions" or what is referred to as "leading the witness". Attorneys like to do this because they get to choose the words. That way, they can make it "come out right". Typically, a "leading question" will be very long and detailed. At the end of the question, the attorney will ask the client whether they agree or disagree with that question (the client almost always agrees).

**EXAMPLE:** Isn't it true, Ms. [REDACTED], that the pain you have starts in the middle of your back about three inches above the beltline and radiates out over your left hip, into the back of your left thigh, down the outside of your left calf, over the top of your foot and into your big toe? (You simply answer, "Yes").

While we definitely want it to "come out right" at your hearing, look who's really doing the talking here! The judge is not stupid. He sees this and begins thinking to himself, "Wait a minute. If this person can't even talk for themselves, they must not know how they feel. They must be bluffing."

The point, of course, is that nobody in the entire world knows how you feel except you. So it's almost impossible for me to describe to the judge how you feel.

Therefore, most of my questions will begin with the words "Who", "What", "Where", "When", "Why" or "How". Each of these questions call on you to supply the details.

Think about it from the other way around. If you only say, "Yes", "No", "That's true" or some other one-word or two-word answer, how is the judge really going to get to know you and get a real sense of how you truly feel?

**Every answer should have information about: (1) How you feel; and, (2) How those feelings limit you.:**

The best way I know for you to accomplish this is to take the question that is asked of you and turn it around in your head where the question comes out:

"What problems do I have \_\_\_ [fill in the blank with the thing or subject you were just asked about] \_\_\_".

**EXAMPLE:** If someone asks you, "Do you drive?" The answer to that particular question is really only "Yes" or "No". What does "Yes" or "No" say about (1) How you feel; and, (2) How those feelings limit you? Nothing!

INSTEAD, take the question and turn it around in your head as, "**What problems do I have** \_\_\_ [driving a car] \_\_\_?" Now answer THAT question; i.e., "When I drive, I find it difficult to sit more than 20" and my foot goes numb (or pain starts shooting into my right leg and foot) where I can't control the gas pedal. I can't twist my head to look for traffic without setting off muscle spasms in my neck and

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my hands go dead where I can't grip the wheel after 10 minutes. Now look at all the details you've given about (1) how you feel, and (2) how those limit your ability to sit, push, pull, twist and grip -- all things you'd need to be able to do to work in most jobs.

**Every answer should tell the truth:** This probably goes without saying. I know you would not purposefully lie. But I also know that most people do, unintentionally, not tell the exact truth. Here are four basic examples you need to remember:

If you don't know the answer, admit it! It's okay to say, "I don't know". If that's the truth, then tell the truth. If you don't tell the truth, you're likely to get in trouble.

If you don't remember, admit it! It's okay to say, "I don't remember". If that's the truth, then tell the truth. If you don't tell the truth, you're likely to get in trouble.

If you don't understand the question, admit it! It's okay to say, "I don't understand [that word] or that question". If that's the truth, then tell the truth. If you don't tell the truth, you're likely to get in trouble.

Do not make it sound better or worse than it really is: Sometimes people are prone to making their disabilities sound better than they really are. My favorite example of this is when someone asks, "How are you?" and the person responds, "I'm fine". Sometimes, too, people want to try to keep a positive attitude so they tend to minimize their problems. That's fine for the sake of keeping their hopes up or saving their pride but it doesn't help the judge know the true extent of the problems and limits they have.

On the other side of the coin, sometimes people make things sound worse than they really are. My favorite example of this is when someone asks, "What do you do during the day?" or "How much can you lift?" and the person responds, "Nothing". The judge's reaction to that would be, "Well, you lifted that shoe you're wearing didn't you?" That's more than "nothing". I know that sounds picky but the judges are entitled to be picky if they want to be. While I don't think the judge is that picky, I don't think we should give any excuse for him to get picky, either. Finally, please look at that answer ("Nothing") one more time. It is ONE word long. How can we expect the judge to really get to know you if you only speak a single word every now and then?

**Each answer should be detailed and explained with examples:** Hopefully, you now understand that one-word and two-word answers are not helping you. Not only should your description of the feelings be detailed (where is the feeling, what kinds of things bring it on or make it worse, where does it move around, what does it feel like), but you can illustrate what you are trying to explain with examples. The two best places I know to get examples from are (a) your daily life, and/or (b) (in cases other than accidents) the last few days/weeks/months that you tried to continue working with your health problems. When you are describing the pain you have experienced, talk to the judge about what it is like to stand at the sink to brush your teeth or comb your hair or getting the frying pan out from under the stove. Explain all the errors you made in the last few

my hands go dead where I can't grip the wheel after 10 minutes. Now look at all the details you've given about (1) how you feel, and (2) how those limit your ability to sit, push, pull, twist and grip -- all things you'd need to be able to do to work in most jobs.

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weeks of work because you couldn't concentrate on what you were doing because of the symptoms you were having. These don't have to be dramatic examples. We're just trying to give the judge a slice of life so he'll know you as a real person.

**Try VERY hard to be fair with your answers:** This may be another way of saying, "Don't make it sound any better or any worse than it really is. At the same time, it is also a way of saying that it's okay to tell the judge you are able to do certain things. I think judges get very tired of people who deny they can do anything at all. Each question being met with a flat denial, "No, I can't do that." I think judges are much more impressed with people who are willing to admit they can do certain things as long as you also explain the limits that go with it. As an example, I don't care if you tell the judge you walk five miles each day -- as long as it's true. At the same time, if it takes you five hours to do that and you would need to rest every ten minutes, that would be another story!

I'd rather not hear the word "can't" come out of your mouth at the hearing. I dare say there is very little you outright cannot do. Instead, I'd rather hear you say you are able to do [whatever it is you're being asked about] but use the question as an opportunity to explain how it makes you feel and the limits you have in doing that activity because of how you feel.

The judge starts to get the picture of a person who does not give up. He gets the picture of someone who is willing to be very straightforward and candid with him about the activities you are able to accomplish.

**Be courteous to the judge:** You should call him Your Honor or Sir. As far as how you dress is concerned, you do not need to wear your Sunday best. I know you would like to extend that courtesy to him as a show of respect. At the same time, remember we are there to tell him the truth and give him that "slice of life". If you aren't dressed in your Sunday best every day, then you aren't showing him what you are like day in and day out -- and yet that's exactly what we're trying to get the judge to see.

By the same token, you shouldn't wear your pajamas and housecoat or grubby T-shirt and jeans full of holes, either. You have to wear something a little better than that. I do want you to be comfortable. Something like a comfortable pair of jeans and nice clean T-shirt or loose-fitting jogging/warm-up's and tennis shoes are okay if you're trying to get a sense of what the minimum acceptable would be.

**Look the judge in the eye:** The judge believes that if you cannot look him in the eye, you can't be telling the truth. More importantly, I want you watching him very closely to see if it appears he truly understands your problems. If you think he does, you can start cutting back on your answers. You don't need to be saying the same thing over and over. There is such a thing as "beating a dead horse" or "trying too hard" here. If I don't think you went far enough in your explanations, I'll pick back up on those points and we'll discuss them further when I'm asking you questions.

**Don't hold anything back:** Many people find themselves thinking during their hearing, "I wonder whether I should say....?" The GOLDEN RULE is that the answer to that question is ALWAYS "Yes". Say it. You may find yourself thinking that the thing you

weeks of work because you couldn't concentrate on what you were doing because of the symptoms you were having. These don't have to be dramatic examples. We're just trying to give the judge a slice of life so he'll know you as a real person.

**Try VERY hard to be fair with your answers:** This may be another way of saying, "Don't make it sound any better or any worse than it really is. At the same time, it is also a way of saying that it's okay to tell the judge you are able to do certain things. I think judges get very tired of people who deny they can do anything at all. Each question being met with a flat denial, "No, I can't do that." I think judges are much more impressed with people who are willing to admit they can do certain things as long as you also explain the limits that go with it. As an example, I don't care if you tell the judge you walk five miles each day -- as long as it's true. At the same time, if it takes you five hours to do that and you would need to rest every ten minutes, that would be another story!

I'd rather not hear the word "can't" come out of your mouth at the hearing. I dare say there is very little you outright cannot do. Instead, I'd rather hear you say you are able to do [whatever it is you're being asked about] but use the question as an opportunity to explain how it makes you feel and the limits you have in doing that activity because of how you feel.

The judge starts to get the picture of a person who does not give up. He gets the picture of someone who is willing to be very straightforward and candid with him about the activities you are able to accomplish.

**Be courteous to the judge:** You should call him Your Honor or Sir. As far as how you dress is concerned, you do not need to wear your Sunday best. I know you would like to extend that courtesy to him as a show of respect. At the same time, remember we are there to tell him the truth and give him that "slice of life". If you aren't dressed in your Sunday best every day, then you aren't showing him what you are like day in and day out -- and yet that's exactly what we're trying to get the judge to see.

By the same token, you shouldn't wear your pajamas and housecoat or grubby T-shirt and jeans full of holes, either. You have to wear something a little better than that. I do want you to be comfortable. Something like a comfortable pair of jeans and nice clean T-shirt or loose-fitting jogging/warm-up's and tennis shoes are okay if you're trying to get a sense of what the minimum acceptable would be.

**Look the judge in the eye:** The judge believes that if you cannot look him in the eye, you can't be telling the truth. More importantly, I want you watching him very closely to see if it appears he truly understands your problems. If you think he does, you can start cutting back on your answers. You don't need to be saying the same thing over and over. There is such a thing as "beating a dead horse" or "trying too hard" here. If I don't think you went far enough in your explanations, I'll pick back up on those points and we'll discuss them further when I'm asking you questions.

**Don't hold anything back:** Many people find themselves thinking during their hearing, "I wonder whether I should say....?" The GOLDEN RULE is that the answer to that question is ALWAYS "Yes". Say it. You may find yourself thinking that the thing you

want to say would hurt your case or not be understood or make someone mad. Again, have some faith in your lawyer. If I think it's not clear, I'll make it clear. But if you held it back and didn't say it, we'll never know. I've been at this thirty years and I can pretty well guarantee you that the human mind works in very strange and wonderful ways. If it crossed your mind, it did so for a reason. Whatever you tell the judge, I will be sure it's put into it's proper context. Do not hold anything back.

**BRUCE K. BILLMAN**

ATTORNEY AT LAW

1109 Heatherstone Drive

Suite 102

Fredericksburg, Virginia 22407

(540) 710-1001

(800) 371-2906 (out of area)

(540) 710-7870 (telefax)

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**Richmond Office**

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(804) 266-9131

**Winchester Office**

102 South Kent Street  
Winchester, Virginia 22601  
(540) 722-9120

*All Reply Mail:  
Fredericksburg Office*

June 15, 2015

Ms. [REDACTED]  
[REDACTED]  
Fredericksburg, VA 22408

**RE: Your Pre-Hearing Conference & Witness Statements**

Dear Ms. [REDACTED]:

Your pre-hearing conference is scheduled for **Wednesday [REDACTED], 2015 at 1:00 pm.** This conference will be held at my Fredericksburg office and will last approximately two hours.

During your conference, you and I will look at current evidence, review the issues of your case, prepare you for your testimony, discuss the roles of any experts SSA may have called to testify, talk about the generalities of the hearing, and answer any questions you may have. I would like for you to do the following things in preparing for our meeting:

- **Your questions:** After reading this letter and any other information you may have, write down each and every question that you want to talk about at our meeting.
- **Prescription printout from pharmacies:** It has been my experience that the judge will sometimes focus heavily on a claimant's medication history. As such, I need for you to contact any pharmacy where you have been filling prescriptions since April 1, 2010 - the last records that I have - and request a printout of all the medications you have been prescribed since then. I know that sometimes pharmacies don't keep these records this far back. Just ask them to go back to as near that date as possible. Also, if you have filled only a very small handful of prescriptions at any pharmacy and it would be too difficult to get that printout, I will not be worried about that. If you are unsure whether to get the printout, call me and we'll discuss it. In the meantime, bring any other printouts to your pre-hearing conference. I will then forward them to the judge.
- **Current list of medicines:** I will need a complete list of any medications that doctors have prescribed for you to take. I've attached a form for you to complete and bring to our meeting. Sometimes, people aren't currently taking a medicine because of side effects but they have not had a chance to discuss this with their physician. Or, they may have run out and cannot afford to refill them. However, until a doctor discontinues a medication or has authorized you to stop taking it, the medication should be reported to the judge.

- Written testimony from family, friends and co-workers: You may have already done this at an earlier stage. If I had asked you to do this before, you can feel free to have people update their previous statements, if it is possible.

If you have not done, this before, it is my very strong preference that statements by other individuals only be submitted in writing, rather than have other people testify personally. The logic behind this is simply to use as much of the hearing time for you and keep the focus on you. I find that having other family members or friends come in can be very distracting and unnecessary. Judges are more than happy to take statements from them in writing. There is no magic number of statements we must get. An average seems to be three statements but we've had cases where no statements were available and we've had cases where five or more were submitted. Get as many as you feel comfortable with and we'll decide how many to actually use. I do not want to overwhelm the judge with a large number of statements.

It will be extremely helpful if one or several of your family members, friends, neighbors, or former co-workers prepare written statements, based on their observations, describing your limited daily activities incapacities and work deterioration. I would like to have at least one from a family member (spouse, parent, child), at least one from a non-family member (friend, neighbor, pastor, etc.) and at least one from a former co-worker, customer or boss. Again, this is not mandatory. Any statement by a former co-worker or boss can oftentimes focus on a period of time where you may have struggled with an injury or illness before finally having to leave work for the last time. This statement can tend to be very powerful. I need these a minimum of fourteen days before the hearing but would hope these can be given to me before or at our upcoming scheduled conference.

Before anyone begins writing, you need to show them the attached "Writing a Third Party Witness Statement". **They need to read this very carefully.** I have included three copies of this letter for you. If you need more, please attempt to copy them or ask my office for more copies to be sent to you. This attachment will hopefully give the people writing enough guidance about what Social Security needs to know. They need to consider the following attachment before they begin writing anything. If they have any questions, I strongly encourage them to call and speak with myself or Ross Billman.

Please call me if you have any questions about the things I've requested for our upcoming conference. Otherwise, I look forward to seeing you then.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce K. Billman", written in a cursive style.

BRUCE K. BILLMAN

BKB/pdc

## WRITING A THIRD PARTY WITNESS STATEMENT

- Your statement should be typewritten, if possible. Handwriting is fine only if it can be easily read. Do not write in pencil. Remember: this will be reviewed by various people who may or may not be able to read your handwriting easily. It will also be scanned into an electronic file. If you do choose to hand write the statement, make sure to use a dark ink that is easily visible. This will allow your writing to withstand any degradation that may occur while scanning the image.
- DO NOT ADDRESS THE STATEMENT TO SOCIAL SECURITY, THE JUDGE, OR ANY OTHER PARTY RELATED TO SOCIAL SECURITY. I am requesting this information. Please address the statement to Bruce K. Billman at the following address:

The Office of Bruce K. Billman, Esq.  
1109 Heatherstone Drive, Suite 101  
Fredericksburg, VA 22407

When the statements are completed they should be mailed to the Fredericksburg address or faxed to (540) 710-7870. They may be emailed *as long as they have a hand written signature*.

- It is my strong suggestion that you mail this to me directly and do not let Ms. [REDACTED] read it.
- The statement **must** be dated
- The statement must have a hand-written signature for personal touch (the law does not require an original or “wet” signature or notarization)
- The statement should describe how long you have known Ms. [REDACTED] and in what capacity (are you a family member, friend, ex-coworker, current or former boss/supervisor?, etc.)
- The statement needs to focus on disabilities and limitations starting around 04/06/2010 (the date Ms. Clemente claims disability) through the current date. It’s okay if you would like to write about things prior to that date but I would strongly suggest focusing on the date suggested and on up through the present.
- **Please do not recount Ms. [REDACTED]’s medical history.** This is a waste of paper in these statements. If you wish to mention one or two relevant procedures, that’s fine but don’t overdo it. If Social Security needs to know information about their medical condition, it will be readily available in the medical records or we will ask the doctors. Your statements are created to show what real world difficulties Ms. [REDACTED] has functioning based on another person's actual observations.
- **Do not make statements such as “I think this person is disabled and they should get Social Security”.** Again, waste of paper. Under Social Security’s rules, these statements cannot be considered. It’s your detailed observations that will help more than anything. The more detail the better.
- **Try to avoid making general or relative statements.** For example, write more than “they don’t do anything”. That’s a general and relative statement. You’d be surprised how often judges, attorneys and Social Security hear people make this statement. The problem is that this tells us nothing specific about what the person does or doesn’t do.

Whenever someone says that to me, I always ask “Did you get out of bed today?” and then the person will see that they did indeed do something that day. It’s all the little details that really help us understand what’s going on with a person and it’s important to talk about them clearly and with as much detail as possible.

## WRITING A THIRD PARTY WITNESS STATEMENT

● **Report the facts as best you know them.** Think of it this way: Social Security will be looking to you like they would a reporter in the news. They need “just the facts”. Reporters usually leave out emotion on behalf of the writer. It doesn’t mean that you shouldn’t put any emotion into this letter but the more you can offer in terms of detailed observation, the better. Just remember to focus on:

If the disability is a physical issue, examples of limitations may include:

- How Ms. [REDACTED] moves affected body parts (e.g. "slowly", "carefully", "awkwardly"; please use your own words)
- How Ms. [REDACTED]'s appearance may indicate pain (e.g. facial grimace or wincing, sighing, grunting, crying, groaning)
- Whether you have seen Ms. [REDACTED] use assistive devices (e.g. canes, crutches, walker, brace, TENS unit, etc.)
- What limits Ms. [REDACTED] may have in basic physical activities such as walking, standing, sitting, lifting, reaching, bending, handling, etc.
- How Ms. [REDACTED] is or was able to cope with stress when in physical pain
- How Ms. [REDACTED] is or was able to focus or concentrate when in physical pain
- How you observed Ms. [REDACTED]'s ability to deal with people when in physical pain
- What measures did Ms. [REDACTED] use to address her pain (i.e. resting, medications, etc.)
- If you noticed Ms. [REDACTED] had good days and bad days, describe what she did on a good day and what she did on a bad day. Estimate how often she seemed to have a bad day.

If you have seen any emotional issues, examples may include similar examples above:

- How Ms. [REDACTED]'s appearance may indicate emotional pain (e.g. facial grimaces or tearing up, sighing, crying, groaning, unwashed or disheveled, etc.)
- How Ms. [REDACTED]'s behavior may indicate emotional pain (e.g. hiding from others, purposely harmful activities, etc.)
- How Ms. [REDACTED] is or was able to cope with stress when in emotional pain.
- How Ms. [REDACTED] is or was able to focus or concentrate when in emotional pain
- How you observed Ms. [REDACTED]'s ability to deal with people when in emotional pain
- How Ms. [REDACTED] was able to understand and remember simple instructions when in emotional pain
- How Ms. [REDACTED] was or is able to organize activities and using good judgment in carrying them out when in emotional pain
- If you noticed Ms. [REDACTED] had good days and bad days, describe what she did on a good day and what she did on a bad day. Estimate how often she seemed to have a bad day.

Finally, no one is going to be upset if you don’t have dates exactly right. We all understand that this is just your best estimation of things and anyone’s memory isn’t perfect. You can feel free to be specific and use exact dates or more general statements like “Summer of 2002” or “January, 2006”. Using dates helps us get an idea of how things have changed over time.

**Remember that this letter will be taking the place of in-person testimony and needs to be thorough in its observations.**

If you feel comfortable, please put your contact information down and give permission in the letter to contact you if someone has questions about what you wrote. You can do this in case the judge or myself have any questions about your letter. This is not required.

## WRITING A THIRD PARTY WITNESS STATEMENT

### ● Other Considerations may include:

- What you think about Ms. [REDACTED]'s work ethic and character. WHY DO YOU THINK THIS?
- How you saw Ms. [REDACTED]'s life changed after she became unable to work.
- How you observed Ms. [REDACTED]'s personality change after she became unable to work.
- How it has affected other members of the family (child had to quit after school activities or leave college, spouse had to get a second job, etc.)
- Help you have seen or given to Ms. [REDACTED]. Such as help that may Ms. [REDACTED] have needed around the home to accomplish things such as taking care of the house, personal needs (bathing, dressing, preparing meals, etc.), chores (grocery shopping, laundry, etc.).

### **If you are a former coworker, customer or supervisor, please consider the following in addition to The General Rules:**

- What you think about Ms. [REDACTED]'s work ethic and character. WHY DO YOU THINK THIS?
- Your observations about actual difficulties Ms. [REDACTED] had in the workplace **with examples** and roughly when they began (month and a year). Typically, these problems affect either the **quantity** or **quality** of work produced. Describe her performance in terms of decreased quantity, quality (or both) and whether those deficiencies would still have met standards for retention of the job.
- Amount of absenteeism, tardiness or instances of having to leave early.
  - Disciplinary or Work Reviews
  - Help that you saw or know Ms. [REDACTED] may have needed at work to accomplish things (e.g. extra time for deadlines, extra breaks outside the normal hour, flexible scheduling, assigning work to other people, etc.)
  - If you know Ms. [REDACTED] was paid more than what her work was worth, (i.e. if Ms. [REDACTED] still received the same salary or rate was but was doing less work than what the job required), please estimate how much she should have been paid for the level of work she was offering (i.e., it can be expressed as a specific dollar amount, percentage or fraction. For example, "I think Ms. [REDACTED]'s work was worth 75% of what I actually paid her.")
  - If you have actual records (times records, paystubs showing decreasing hours of work and/or increasing number of sick pay, work reviews), or formal job performance evaluations and any other such records that demonstrate these deficiencies in job performance, they would be **extremely** helpful. Please send them with your Third Party Witness Statement, if available.
  - If you noticed Ms. [REDACTED] had good days and bad days, describe what she did on a good day and what she did on a bad day. Estimate how often she seemed to have a bad day.

**IF YOU HAVE QUESTIONS ABOUT YOUR STATEMENT OR UNSURE ABOUT THE THINGS IN THIS HANDOUT, CALL MY OFFICE AND SCHEDULE A PHONE CONFERENCE WITH ROSS BILLMAN FOR 30 MINUTES.**

**YOU CAN REACH ROSS BILLMAN VIA EMAIL AT [rkillman1@comcast.net](mailto:rkillman1@comcast.net).**



## Your Hearing Might Involve the Testimony of a Vocational Expert

When you get your Notice of Hearing from the judge, you may notice that the Social Security Administration will have a witness there, called a "Vocational Expert" (VE). This person is exactly what the title says; an Expert about "Vocations" or jobs.

I think it's important that you understand what the purpose of a VE is and why the VE is there. By knowing this, you should be able to understand how your testimony will fit into the entire case.

We are trying to prove you are "Disabled". "Disability" under the Social Security law means the inability to do ANY job. This not only includes the work you may have done in the past but ANY other work as well. If the judge decides you are able to perform your former work, then clearly you are not disabled.<sup>1</sup> However, if he feels you are unable to perform your past work, he will consider if there is something else you could possibly do. At that point, the only things the judge can consider in deciding this are (1) your age; (2) your education; (3) any skills you may have developed in performing work in the last 15 years; and (4) any physical and mental limits you have.

The law is **very** specific that the judge CANNOT CONSIDER: (1) nobody would ever hire you to do the job because of your health history -- or any other reason for that matter, (2) you are competing with much more qualified people for the job, (3) there are no current vacancies for such a job, (4) the job doesn't pay as much as you are used to making, (5) the job doesn't pay as much as you need to live, (6) the job is not something you are particularly interested in doing, (7) the job is something you've never done before and have no training to do. So forget these concerns.<sup>2</sup> Instead, let's focus on the things the judge can take into account:

(1) Your age: You are as old as you are. I cannot change that or make the judge see it a different way. We cannot affect this factor at all.

(2) Your education: Sometimes, grade levels can be deceiving. Just because someone makes it through high school, doesn't mean they have a high school education. In all honesty, however, the only distinction SSA makes is between the person who cannot read and write at all and the person who can. Ultimately, unless a person is completely illiterate, there is no difference in the eyes of the law between

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<sup>1</sup>Generally, if the judge has asked a VE to come to the hearing, he has a pretty good idea that you would be unable to do what you used to do. VE's are only necessary to provide information about other work you might be able to perform. So if he's gone to the trouble of calling a VE in as a witness, it's fairly likely that he already is fairly committed (although he may not be totally sold, yet) to the idea you can't do the kind of work you've done in the past.

<sup>2</sup> I know this is unfair! But it is the law. I know they are real concerns but they are not something we can argue in your case because the law says very clearly that Social Security does not have to take these factors into account in deciding the question of disability.

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someone with a tenth grade education and a person with five years of post-graduate degrees. We really have no ability to affect this factor, either.

(3) Skills: This can be very important in many cases - but less so in your particular case. Remember, he is trying to decide if there is other work you might be able to perform if you're unable to do the type of work you've done in the past. In deciding what other jobs you would have some chance of doing, it makes sense to know if you've got some skills to take with you which would help you do that job. Think of it this way. There are more possibilities for work for someone who has skills from reading blueprints and supervising (hiring, firing, doing job performance evaluations, setting work schedules, doing budgets, etc.) than there would be for the ditch digger he/she supervised.

The problem I encounter is that most people tend to glorify their past work to make it sound very important and very skilled. When they do so, however, they are simply handing SSA ammunition (skills) to turn them down. I want us to be very clear about your past work and whether there were truly some learned skills you had acquired in the course of that work. This requires a very honest look at what was actually done. We all want to believe our job is complicated, important and demanding in terms of responsibilities. But we don't want your jobs portrayed that way if, in fact, it was not really the case. This is why job "titles" alone (without thorough explanation of what was actually done) can be so misleading. I can't count the number of people who insisted on making sure everyone knew they were a "manager". When it got right down to it, however, all the real management decisions were passed on to someone up the ladder. This does not give rise to any real skills.

Part of what the VE is there to do is to explain to the judge what skills you may have acquired in your past work. Obviously, the VE's testimony has to be based in some part on what you say about what you really did and how you characterize that. In any event, you and I will have to discuss this in depth to decide how your past work should be portrayed in your testimony.

(4) Limitations: I've tried to convey the importance of describing your limitations in the accompanying letter. The bottom line is, I don't care how old/you, educated/illiterate, or skilled/unskilled you are. If you do not have the physical and mental ability to sustain work on an eight-hour-per-day, five-day-per-week basis, you are disabled and entitled to benefits.

By this point, you might think that this is all up to the VE. It is not up to the VE at all. The VE testifies through what is called a "hypothetical question". The VE is asked to assume certain things are true about you. Based only on those assumptions, the VE must tell the judge if any work can be done on a full-time basis. The assumptions are given to the VE by the judge. The VE's answer, then, is completely the result of what the assumptions are.

For example, if the judge asked the VE to assume we have a (a) 27 year old individual, (b) with a college degree in rocket science, (c) who has worked in the past as a manager of a computer factory, having skills in hiring and firing, analyzing job performances, setting work schedules, and, (d) who can stand/walk for up to eight straight

someone with a tenth grade education and a person with five years of post-graduate degrees. We really have no ability to affect this factor, either.

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hours, sit six hours at a time with only a five minute rest period in between, as well as lift fifty pounds many times each hour -- what do you think the VE would say? I've made this "hypothetical question" so silly, that, of course, you know the answer. The VE would say this person could do any number of occupations.

The problem, of course, is that particular set of assumptions doesn't accurately define you. So whatever the VE might say about such work doesn't really tell the judge anything about how he should decide your case.

The trick is to ask the VE a hypothetical question that best describes all of your characteristics. The best question I know to ask a VE is, "Assume everything my client said today was true. Can the person work?". If you've done your job right in describing your problems, the answer has to be "No work".

In that regard, my experience is that most VE's consider the ability to concentrate and pay attention to be critical to the ability to do anything -- including something as simple and routine as watching a security monitor or making change in a gas station. I think most people tend to overlook this as a problem. They are more prone to describing their disabilities or limitations in ways which are much more obvious -- typically, in the physical limits of walking, standing, sitting, lifting, etc.

I want you to give some thought to whether or not your ability to concentrate is also affected by your conditions. If so, this needs to be explained at the hearing. Usually, this will show up in either problems with the (1) quantity of the activity that can be done (production rate) or (2) quality of the activity that can be done (error rates).

If concentration is affected, the person may not make any errors but they have to slow down and go slowly to keep their mind on what they are doing. This results in not getting the work out as fast as usual. Similarly, the person may be doing the activity as fast as they always have in the past but, because of concentration difficulties, there are many more mistakes.

If you have any activities that you do at home (and/or during the days leading up to your leaving work) that demanded concentration, try to think if you are (were) doing them as quickly now or if there are problems with mistakes. Examples of activities at home include balancing a checkbook, reading, knitting, painting, playing card games or cooking.

Finally, although the VE typically does not actually make the decision, the testimony he/she provides is critical to your case. Try to watch the VE during the hearing if you can to see if you think they understand your problems. You are trying to convince the VE as well as the judge and all of the factors I've described about effective testimony for convincing the judge also apply to the VE.

hours, sit six hours at a time with only a five minute rest period in between, as well as lift fifty pounds many times each hour -- what do you think the VE would say? I've made this "hypothetical question" so silly, that, of course, you know the answer. The VE would say this person could do any number of occupations.

The problem, of course, is that particular set of assumptions doesn't accurately define you. So whatever the VE might say about such work doesn't really tell the judge anything about how he should decide your case.

The trick is to ask the VE a hypothetical question that best describes all of your characteristics. The best question I know to ask a VE is, "Assume everything my client said today was true. Can the person work?". If you've done your job right in describing your problems, the answer has to be "No work".

In that regard, my experience is that most VE's consider the ability to concentrate and pay attention to be critical to the ability to do anything -- including something as simple and routine as watching a security monitor or making change in a gas station. I think most people tend to overlook this as a problem. They are more prone to describing their disabilities or limitations in ways which are much more obvious -- typically, in the physical limits of walking, standing, sitting, lifting, etc.

I want you to give some thought to whether or not your ability to concentrate is also affected by your conditions. If so, this needs to be explained at the hearing. Usually, this will show up in either problems with the (1) quantity of the activity that can be done (production rate) or (2) quality of the activity that can be done (error rates).

If concentration is affected, the person may not make any errors but they have to slow down and go slowly to keep their mind on what they are doing. This results in not getting the work out as fast as usual. Similarly, the person may be doing the activity as fast as they always have in the past but, because of concentration difficulties, there are many more mistakes.

If you have any activities that you do at home (and/or during the days leading up to your leaving work) that demanded concentration, try to think if you are (were) doing them as quickly now or if there are problems with mistakes. Examples of activities at home include balancing a checkbook, reading, knitting, painting, playing card games or cooking.

Finally, although the VE typically does not actually make the decision, the testimony he/she provides is critical to your case. Try to watch the VE during the hearing if you can to see if you think they understand your problems. You are trying to convince the VE as well as the judge and all of the factors I've described about effective testimony for convincing the judge also apply to the VE.

**APPENDIX E**

**SAMPLE FORMS FOR DOCTORS**

NAME:

SSAN:

**AMERICAN HEART ASSOCIATION**  
**CLASSIFICATION OF PATIENTS**  
**WITH DISEASES OF THE HEART**

**FUNCTIONAL CAPACITY**

- Class I      Patients with cardiac disease but without resulting limitation of physical activity. Ordinary physical activity does not cause undue fatigue, palpitation, dyspnea, or anginal pain.
- Class II      Patients with cardiac disease resulting in slight limitation of physical activity. They are comfortable at rest. Ordinary physical activity results in fatigue, palpitation, dyspnea, or anginal pain.
- Class III      Patients with cardiac disease resulting in marked limitation of physical activity. They are comfortable at rest. Less than ordinary activity causes fatigue, palpitation, dyspnea or anginal pain.
- Class IV      Patients with cardiac disease resulting in inability to carry on any physical activity without discomfort. Symptoms of cardiac insufficiency or of the anginal syndrome are present even at rest. If any physical activity is undertaken discomfort is increased.

**THERAPEUTIC CLASSIFICATION**

- Class A      Patients with a cardiac disease whose ordinary physical activity need not be restricted.
- Class B      Patients with cardiac disease whose ordinary physical activity need not be restricted, but who should be advised against severe or competitive physical efforts.
- Class C      Patients with cardiac disease whose ordinary physical activity should be moderately restricted, and whose more strenuous efforts should be discontinued.
- Class D      Patients with cardiac disease whose ordinary physical activity should be markedly restricted.
- Class E      Patients with cardiac disease who should be at complete rests, confined to bed or chair.

IN RE:

SSAN:

**PHYSICAL RESIDUAL FUNCTIONAL CAPACITY**

**DEFINITIONS:** Occasionally: activity or condition exists up to 1/3 of the time  
Frequently: activity or condition exists from 1/3 to 2/3 of the time  
Constantly: activity or condition exists all or virtually all of the time

**I. BASIC PHYSICAL DEMANDS WHICH THIS INDIVIDUAL CAN MEET:**

**Sedentary work:** Exerting up to 10 pounds of force occasionally and/or a negligible amount of force frequently to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

**Light work:** Exerting up to 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly to move objects. Physical demand requirements are in excess of those for Sedentary Work. Even though the weight lifted may be only a negligible amount, a job should be rated Light Work: (1) when it requires walking or standing six or more hours in a day; or (2) when it requires sitting most of the time but entails frequent to constant pushing and/or pulling of arm or leg controls; and/or (3) when the job requires working at a production rate pace entailing the constant pushing and/or pulling of materials even though the weight of those materials is negligible.

**Medium work:** Exerting 20 to 50 pounds of force occasionally, and/or 10 to 25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Light Work.

**Heavy work:** Exerting 50 to 100 pounds of force occasionally, and/or 25 to 50 pounds of force frequently, and/or 10 to 20 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Medium Work.

**II. ABILITY TO SUSTAIN THE PHYSICAL LEVEL OF WORK YOU HAVE INDICATED IN SECTION I, ABOVE.**

- This person can sustain the activity I have indicated in **Section I** on a full time basis; i.e., eight-hour-per-day, five-days per week, fifty-two weeks per year. This would include short (10 minute) breaks at mid-morning and mid-afternoon with a thirty-minute meal break in the middle of the work day:
- This person cannot sustain this work on a full time basis but could work less than full time at the level I have indicated in **Section I**. This person can work:

\_\_\_\_\_ hours per day      \_\_\_\_\_ days per week  
(Up to 8)                              (Up to 5)

**III. OTHER RESTRICTIONS THAN THE FULL-TIME OR PART-TIME WORK, ABOVE** (check and/or complete all situations that apply). This person cannot perform all the physical or other requirements of work, defined in **Section I, above**. Additional limitations on work are as follows (**check all that apply**):

**A) PROBLEMS WITH SITTING**

**Prolonged sitting at one time (“sit/stand option”):** Sitting requirements of sedentary work generally require sitting up to 2 hours straight. This person cannot sit up to two hours at a time and needs a “sit/stand option”. Please describe the situation which best describes the parameters of this person’s “sit/stand option” as follows:

Alternate between sitting and standing (claimant remains at a work station and is able to continue doing the job functions as long as he/she does not have to bend at the waist over work process at a desk or table to continue the work process; e.g., typing or assembling) - frequency of altering between sitting and standing is entirely at claimant’s option.

Alternate between sitting and walking (would need to walk and stretch and would not be readily available at a stationary work post) - frequency of altering position is entirely at claimant’s option. If you check this option, indicate how long the claimant would need to stretch and walk before returning to work post either sitting or standing:

\_\_\_\_\_ Hours      \_\_\_\_\_ Minutes

Alternate between sitting and walking: Frequency: every \_\_\_\_\_ minutes.

**Total Sitting in a work day:** Sedentary work requires sitting for 6 - 8 hours per day. This person cannot sit for this total amount of time during any one day. Should not sit more than a total of \_\_\_\_\_ hours in an eight hour day.

**B) STRESS:**  Low stress jobs only (little if any deadlines or production quotas/requirements)  
 No contact with the public

**C) LIFTING**  **Lifting less than sedentary requirements:** Lifting requirements of sedentary work are 10 pounds of force occasionally and/or a negligible amount of force frequently. This person should be restricted to lifting

\_\_\_\_\_ pounds occasionally

AND/OR

No *frequent* lifting of any weight - no matter how light.

**D) USE OF ARMS AND HANDS:** Sedentary work generally requires the use of both upper extremities on a frequent to constant basis. The following restrictions relate to use of the upper extremities

**LEFT UPPER EXTREMITY**

Does interfere with fine, dexterous movements; e.g., putting small objects together, picking up change with fingers, typing or threading a needle.

Degree of interference \*

- Severe**
- Moderately Severe**
- Moderate**
- Mild**

Does interfere with gross dexterous movements; e.g., using hand tools such as screw drivers or soldering guns, grasping and pulling levers, gripping objects such as a ream of paper, hand writing or cutting meat with a knife and fork.

Degree of interference

- Severe**
- Moderately Severe**
- Moderate**
- Mild**

**RIGHT UPPER EXTREMITY**

Does interfere with fine, dexterous movements; e.g., putting small objects together, picking up change with fingers, typing or threading a needle.

Degree of interference \*

- Severe**
- Moderately Severe**
- Moderate**
- Mild**

Does interfere with gross dexterous movements; e.g., using hand tools such as screw drivers or soldering guns, grasping and pulling levers, gripping objects such as a ream of paper, hand writing or cutting meat with a knife and fork.

Degree of interference

- Severe**
- Moderately Severe**
- Moderate**
- Mild**

\_\_\_\_\_  
EXAMINER'S SIGNATURE

\_\_\_\_\_  
DATE

PRINT NAME: \_\_\_\_\_

M.D.     Nurse Practitioner  
 Other: \_\_\_\_\_

\*  
**Severe** - Indicates that the activity is precluded on a sustained basis.  
**Moderately Severe** - Indicates that the activity is not totally precluded but is substantially impaired in terms of speed and accuracy and can only be engaged in occasionally or seldom during an eight hour day.  
**Moderate** - Indicates that speed and accuracy are somewhat impaired and can be engaged in occasionally to frequently (but not constantly or continuously) during an eight hour day.  
**Mild** - Speed and accuracy are only minimally impaired; e.g., 85% of normal, and the activity can be engaged in constantly or continuously during an eight hour day.

NAME:

SSAN:

## VISUAL FUNCTIONAL CAPACITIES ASSESSMENT

1. The Claimant's diagnoses with respect to Visual Acuity are:  
 (check here if no abnormality . Otherwise, complete the diagnosis and VA)

**RIGHT EYE**

**LEFT EYE**

Diagnosis: \_\_\_\_\_  
 VA (corrected): \_\_\_\_\_

2. The Claimant's diagnoses with respect to Visual Field are:  
 (check here if no abnormality . Otherwise, complete the diagnosis and fields, below)

**RIGHT EYE**

**LEFT EYE**

Diagnosis:		
VF @ 0°	_____ °	_____ °
VF @ 45°	_____ °	_____ °
VF @ 90°	_____ °	_____ °
VF @ 135°	_____ °	_____ °
VF @ 180°	_____ °	_____ °
VF @ 225°	_____ °	_____ °
VF @ 270°	_____ °	_____ °
VF @ 315°	_____ °	_____ °

3. Limitations Imposed by Visual Abnormalities

Does interfere with fine, dexterous movements; e.g., using hand tools such as screw drivers or soldering guns, putting small objects together, writing, typing, reading a computer screen, or threading a needle.

Does interfere with gross visual activities (including depth perception); e.g., navigating in strange places, being aware of sudden hazards, watching for traffic, perceiving colors or manipulating large objects

Degree of interference\*

- Severe
- Moderately Severe
- Moderate
- Mild

Degree of interference\*

- Severe
- Moderately Severe
- Moderate
- Mild

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\*Severe - Indicates that the activity is precluded on a sustained basis. Would fail to perform visual activities accurately after short durations (10-15 minutes). Would need to rest eyes for 10-15 minutes per hour at a minimum. Accuracy would be expected to be compromised at 50% or less

Moderately Severe - Indicates that the activity is not totally precluded but is substantially impaired in terms of speed and accuracy and can only be engaged in less than occasionally or seldom during an eight hour day. Accuracy in any sustained activity would be expected as 50%-60% of normal.

Moderate - Indicates that speed and accuracy are somewhat impaired and can be engaged in occasionally to frequently (but not constantly or continuously) during an eight hour day. Accuracy in any sustained activity would be expected as 61% to 84% of normal.

Mild - Speed and accuracy are only minimally impaired; e.g., 85% of normal, and the activity can be engaged in constantly or continuously during an eight hour day.

NAME:

SSAN:

**EVALUATION OF IMPAIRMENT OF THE HANDS**

**A. BACKGROUND INFORMATION**

1. Dominant hand:       Right                       Left                       Ambidexterous
2. Hand(s) involved:    Right                       Left
3. Impairment is due to:  

<input type="checkbox"/> Arthritis	<input type="checkbox"/> Injury/Burns
<input type="checkbox"/> Neuropathy	<input type="checkbox"/> Connective Tissue Disease
<input type="checkbox"/> Congenital Deformities	<input type="checkbox"/> Carpal Tunnel Syndrome
<input type="checkbox"/> Other _____	<input type="checkbox"/> Rheumatoid Arthritis
4. Date of Onset of impairment: \_\_\_\_\_
5. Treatment:
  - a. Medications (name of medications and doses):
  
  - b. Surgeries:
  
  - c. Physical Therapy:
6. Response to Treatment:  

<input type="checkbox"/> Improved
<input type="checkbox"/> Unchanged
<input type="checkbox"/> Worsening
7. Ability to care for personal needs (e.g. combing hair, brushing teeth, dressing, feeding etc.):  

<input type="checkbox"/> Unable to perform
<input type="checkbox"/> Able to perform without any difficulty
<input type="checkbox"/> Able to perform with difficulty

**B. PHYSICAL EXAMINATION**

1. Deformities or abnormalities of the fingers, hands and wrists on physical exam such as synovitis, change of temperature, change of color, decreased range of motion, swelling and effusion:

RIGHT FINGERS	PIP	MCP	DIP	If present, indicate frequency of finding		
				Constant	Frequent	Occasional
Thumb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Index	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Middle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Little	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
WRIST	TINEL'S <input type="checkbox"/> Present <input type="checkbox"/> Absent			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

LEFT FINGERS	PIP	MCP	DIP	If present, indicate frequency of finding		
				Constant	Frequent	Occasional
Thumb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Index	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Middle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Little	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
WRIST	TINEL'S <input type="checkbox"/> Present <input type="checkbox"/> Absent			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Atrophy of the following surfaces:

- a. Thenar  None  Mild  Moderate  Marked  
 b. Hypothenar  None  Mild  Moderate  Marked  
 c. Dorsal  None  Mild  Moderate  Marked

3. Grip Strength: (by dynamometer or Geigy gripometer if available) in fractions of 5.

- |      |       |   |
|------|-------|---|
| Left | Right |   |
| 1    | 1     | Flaccid Paralysis: Almost paralyzed, no hand motion at all.                               |
| 2    | 2     | Severe Weakness: Complete hand motion with gravity eliminated.                            |
| 3    | 3     | Moderate Weakness: Complete hand motion against gravity.                                  |
| 4    | 4     | Mild Weakness: Complete hand motion against gravity and some resistance against examiner. |
| 5    | 5     | Normal: Full resistance against examiner.   |

4. Your opinion regarding patient's cooperation.

Excellent

Good

Fair

Poor

**C. FUNCTION**

Yes     No

(if yes, indicate severity of interference for each extremity, below)

**LEFT HAND AND/OR ARM**

**RIGHT HAND AND/OR ARM**

Does interfere with fine, dexterous movements; e.g., using hand tools such as keyboarding, use of screw drivers or soldering guns, putting small objects together, picking up change with fingers, or threading a needle.

Does interfere with fine, dexterous movements; e.g., using hand tools such as keyboarding, use of screw drivers or soldering guns, putting small objects together, picking up change with fingers, or threading a needle.

Degree of interference\*

Degree of interference

- Severe
- Moderately Severe
- Moderate
- Mild

- Severe
- Moderately Severe
- Moderate
- Mild

Does interfere with gross dexterous movements; e.g., using hands or fingers to push buttons or manipulate switches, writing or cutting meat with a knife and fork.

Does interfere with gross dexterous movements; e.g., using hands or fingers to push buttons or manipulate switches, writing or cutting meat with a knife and fork.

Degree of interference

Degree of interference

- Severe
- Moderately Severe
- Moderate
- Mild

- Severe
- Moderately Severe
- Moderate
- Mild

\_\_\_\_\_  
DATE

\_\_\_\_\_  
\*Severe - Indicates that the activity is precluded on a sustained basis.

Moderately Severe - Indicates that the activity is not totally precluded but is substantially impaired in terms of speed and accuracy and can only be engaged in occasionally or seldom during an eight hour day.

Moderate - Indicates that speed and accuracy are somewhat impaired and can be engaged in occasionally to frequently (but not constantly or continuously) during an eight hour day.

Mild - Speed and accuracy are only minimally impaired; e.g., 85% of normal, and the activity can be engaged in constantly or continuously during an eight hour day.

**Mental Impairment Questionnaire (Listings)**

NAME: _____	SSAN: _____
-------------	-------------

Please answer the following question concerning your patient's impairments. Attach all relevant treatment notes and test results which have not been provided previously to the Social Security Administration

1. Date of Initial Treatment/Evaluation: \_\_\_\_\_

2. Approximate frequency of either personal contact or contact with other treating professionals in your office; e.g., Ph.D.'s, LCSW's, LPC's, etc.

Weekly    Bi-weekly    Monthly    Quarterly    Other: \_\_\_\_\_

3. DSM-IV Multiaxial Evaluation:

Axis I: \_\_\_\_\_  
*(DSM Title - number, if available)*

Axis III: \_\_\_\_\_  
*(DSM Title - number, if available)*

\_\_\_\_\_

*(DSM Title - number, if available)*

Axis IV: \_\_\_\_\_

\_\_\_\_\_

*(DSM Title - number, if available)*

Axis V: Current GAF: \_\_\_\_\_

Axis II: \_\_\_\_\_

Highest GAF past year: \_\_\_\_\_

*(DSM Title - number, if available)*

Lowest GAF past year: \_\_\_\_\_

\_\_\_\_\_

*(DSM Title - number, if available)*

4. Identify your patient's signs and symptoms:

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li><input type="checkbox"/> Poor Memory</li><li><input type="checkbox"/> Appetite disturbance with weight change</li><li><input type="checkbox"/> Sleep disturbance</li><li><input type="checkbox"/> Personality change</li><li><input type="checkbox"/> Mood disturbance</li><li><input type="checkbox"/> Emotional lability</li><li><input type="checkbox"/> Loss of intellectual ability of 15 IQ points or more</li><li><input type="checkbox"/> Delusions or hallucinations</li><li><input type="checkbox"/> Substance abuse</li><li><input type="checkbox"/> Recurrent panic attacks</li><li><input type="checkbox"/> Anhedonia or pervasive loss of interests</li><li><input type="checkbox"/> Psychomotor agitation or retardation</li><li><input type="checkbox"/> Paranoia or inappropriate suspiciousness</li><li><input type="checkbox"/> Feelings of guilt or worthlessness</li><li><input type="checkbox"/> Difficulty thinking or concentrating</li><li><input type="checkbox"/> Suicidal ideation or attempts</li></ul> | <ul style="list-style-type: none"><li><input type="checkbox"/> Oddities of thought, perception, speech or behavior</li><li><input type="checkbox"/> Perceptual disturbances</li><li><input type="checkbox"/> Time or place orientation</li><li><input type="checkbox"/> Catatonia or grossly disorganized behavior</li><li><input type="checkbox"/> Social withdrawal or isolation</li><li><input type="checkbox"/> Blunt, flat or inappropriate affect</li><li><input type="checkbox"/> Illogical thinking or loosening of associations</li><li><input type="checkbox"/> Decreased energy</li><li><input type="checkbox"/> Manic syndrome</li><li><input type="checkbox"/> Obsessions or compulsions</li><li><input type="checkbox"/> Intrusive recollections of a traumatic experience</li><li><input type="checkbox"/> Persistent irrational fears</li><li><input type="checkbox"/> Generalized persistent anxiety</li><li><input type="checkbox"/> Somatization unexplained by organic disturbance</li><li><input type="checkbox"/> Hostility and irritability</li><li><input type="checkbox"/> Pathological dependence or passivity</li></ul> |
|--|--|

Other symptoms and remarks: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Mental Impairment Questionnaire (Listings)**

NAME: _____	SSAN: _____
-------------	-------------

Please answer the following question concerning your patient's impairments. Attach all relevant treatment notes and test results which have not been provided previously to the Social Security Administration

1. Date of Initial Treatment/Evaluation: \_\_\_\_\_

2. Approximate frequency of either personal contact or contact with other treating professionals in your office; e.g., Ph.D.'s, LCSW's, LPC's, etc.

Weekly    Bi-weekly    Monthly    Quarterly    Other: \_\_\_\_\_

3. DSM-IV Multiaxial Evaluation:

Axis I: \_\_\_\_\_  
*(DSM Title - number, if available)*

Axis III: \_\_\_\_\_  
*(DSM Title - number, if available)*

\_\_\_\_\_

*(DSM Title - number, if available)*

Axis IV: \_\_\_\_\_

\_\_\_\_\_

*(DSM Title - number, if available)*

Axis V: Current GAF: \_\_\_\_\_

Axis II: \_\_\_\_\_

Highest GAF past year: \_\_\_\_\_

*(DSM Title - number, if available)*

Lowest GAF past year: \_\_\_\_\_

\_\_\_\_\_

*(DSM Title - number, if available)*

4. Identify your patient's signs and symptoms:

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li><input type="checkbox"/> Poor Memory</li><li><input type="checkbox"/> Appetite disturbance with weight change</li><li><input type="checkbox"/> Sleep disturbance</li><li><input type="checkbox"/> Personality change</li><li><input type="checkbox"/> Mood disturbance</li><li><input type="checkbox"/> Emotional lability</li><li><input type="checkbox"/> Loss of intellectual ability of 15 IQ points or more</li><li><input type="checkbox"/> Delusions or hallucinations</li><li><input type="checkbox"/> Substance abuse</li><li><input type="checkbox"/> Recurrent panic attacks</li><li><input type="checkbox"/> Anhedonia or pervasive loss of interests</li><li><input type="checkbox"/> Psychomotor agitation or retardation</li><li><input type="checkbox"/> Paranoia or inappropriate suspiciousness</li><li><input type="checkbox"/> Feelings of guilt or worthlessness</li><li><input type="checkbox"/> Difficulty thinking or concentrating</li><li><input type="checkbox"/> Suicidal ideation or attempts</li></ul> | <ul style="list-style-type: none"><li><input type="checkbox"/> Oddities of thought, perception, speech or behavior</li><li><input type="checkbox"/> Perceptual disturbances</li><li><input type="checkbox"/> Time or place orientation</li><li><input type="checkbox"/> Catatonia or grossly disorganized behavior</li><li><input type="checkbox"/> Social withdrawal or isolation</li><li><input type="checkbox"/> Blunt, flat or inappropriate affect</li><li><input type="checkbox"/> Illogical thinking or loosening of associations</li><li><input type="checkbox"/> Decreased energy</li><li><input type="checkbox"/> Manic syndrome</li><li><input type="checkbox"/> Obsessions or compulsions</li><li><input type="checkbox"/> Intrusive recollections of a traumatic experience</li><li><input type="checkbox"/> Persistent irrational fears</li><li><input type="checkbox"/> Generalized persistent anxiety</li><li><input type="checkbox"/> Somatization unexplained by organic disturbance</li><li><input type="checkbox"/> Hostility and irritability</li><li><input type="checkbox"/> Pathological dependence or passivity</li></ul> |
|--|--|

Other symptoms and remarks: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Indicate to what degree the following functional limitations exist as a result of your patient's mental impairments:

Restriction of Activities of Daily Living <sup>1</sup>	None <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Marked* <input type="checkbox"/>	Extreme <input type="checkbox"/>
Difficulties in maintaining social relationships <sup>2</sup>	None <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Marked* <input type="checkbox"/>	Extreme <input type="checkbox"/>
Difficulties in maintaining concentration, persistence or pace. <sup>3</sup>	Never <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Marked* <input type="checkbox"/>	Extreme <input type="checkbox"/>
Episodes of decompensation, each of extended duration. <sup>4</sup>	Never <input type="checkbox"/>		One or two <input type="checkbox"/>	Three <input type="checkbox"/>	Four or more <input type="checkbox"/>

6. Is the patient a malingerer?  Yes  No

7. Can your patient manage benefits in his or her own best interest?  Yes  No

M.D.  PH.D.

\_\_\_\_\_  
Date

**\*Note:** Marked means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively.

<sup>1</sup> Activities of daily living include adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for grooming and hygiene, using telephones and directories, and using a post office. Assess the quality of these activities by their independence, appropriateness, effectiveness and sustainability and the extent to which the person is capable of initiating and participating in activities independent of supervision or direction. A "marked" impairment can exist even if a wide range of activities are done but there is serious difficulty in performing them without direct supervision or they are not done in a suitable manner or on a consistent, useful, routine basis or without undue interruptions or distractions.

<sup>2</sup> Refers to capacity to interact independently, appropriately, effectively and on a sustained basis with other individuals. Impaired social functioning can be demonstrated by a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships or social isolation.

<sup>3</sup> Refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. Clinical tests assessing tasks requiring short-term memory or through tasks that must be completed within established time limits may be helpful; e.g., serial 7's, WAIS-III, etc. Strengths and weaknesses in areas of concentration and attention can be discussed in terms of ability to work at a consistent pace for acceptable periods of time and until tasks are completed over the course of an 8-hour day to achieve a goal or objective.

<sup>4</sup> Refers to exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning. The term "repeated episodes of decompensation, each of extended duration" means 3 episodes within 1 year or an average of once every 4 months, each lasting for at least 2 weeks. Less frequent episodes of longer duration or more frequent episodes of shorter duration may be considered functionally equivalent to "repeated episodes of decompensation..."

5. Indicate to what degree the following functional limitations exist as a result of your patient's mental impairments:

Restriction of Activities of Daily Living <sup>1</sup>	None <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Marked* <input type="checkbox"/>	Extreme <input type="checkbox"/>
Difficulties in maintaining social relationships <sup>2</sup>	None <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Marked* <input type="checkbox"/>	Extreme <input type="checkbox"/>
Difficulties in maintaining concentration, persistence or pace. <sup>3</sup>	Never <input type="checkbox"/>	Mild <input type="checkbox"/>	Moderate <input type="checkbox"/>	Marked* <input type="checkbox"/>	Extreme <input type="checkbox"/>
Episodes of decompensation, each of extended duration. <sup>4</sup>	Never <input type="checkbox"/>		One or two <input type="checkbox"/>	Three <input type="checkbox"/>	Four or more <input type="checkbox"/>

6. Is the patient a malingerer?  Yes  No

7. Can your patient manage benefits in his or her own best interest?  Yes  No

M.D.  PH.D.

Date

**\*Note:** Marked means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively.

<sup>1</sup> Activities of daily living include adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for grooming and hygiene, using telephones and directories, and using a post office. Assess the quality of these activities by their independence, appropriateness, effectiveness and sustainability and the extent to which the person is capable of initiating and participating in activities independent of supervision or direction. A "marked" impairment can exist even if a wide range of activities are done but there is serious difficulty in performing them without direct supervision or they are not done in a suitable manner or on a consistent, useful, routine basis or without undue interruptions or distractions.

<sup>2</sup> Refers to capacity to interact independently, appropriately, effectively and on a sustained basis with other individuals. Impaired social functioning can be demonstrated by a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships or social isolation.

<sup>3</sup> Refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. Clinical tests assessing tasks requiring short-term memory or through tasks that must be completed within established time limits may be helpful; e.g., serial 7's, WAIS-III, etc. Strengths and weaknesses in areas of concentration and attention can be discussed in terms of ability to work at a consistent pace for acceptable periods of time and until tasks are completed over the course of an 8-hour day to achieve a goal or objective.

<sup>4</sup> Refers to exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning. The term "repeated episodes of decompensation, each of extended duration" means 3 episodes within 1 year or an average of once every 4 months, each lasting for at least 2 weeks. Less frequent episodes of longer duration or more frequent episodes of shorter duration may be considered functionally equivalent to "repeated episodes of decompensation..."

## Mental Residual Functional Capacity Assessment

<b>NAME:</b>	<b>SSAN:</b>
--------------	--------------

Each activity is to be evaluated within the context of the individual's ability to **sustain that activity over a normal workday and work week**. Thus, an individual's ability to perform an activity in a vacuum or only for short periods of time is not germane. Strong consideration must be given to an individual's ability to consistently **sustain** the activity 8 hours/day, 5 days/week.

### DEFINITIONS

**Severe:** Indicates that the activity is totally precluded on a sustained basis and would result in failing after even short duration; e.g., 5-15 minutes.

**Moderately Severe:** Indicates that the activity is not totally precluded, but is substantially impaired in terms of speed or accuracy of carrying out the task and can only be engaged in occasionally or seldom during an eight hour workday; e.g., short durations (5-15 minutes) not totaling more than two hours in an eight hour workday.

**Moderate:** Indicates that the activity is somewhat impaired (can be performed at 80-85 percent of expected or normal levels in terms of speed or accuracy of carrying out the task), but can be engaged in occasionally to frequently (1/3-2/3 of a day), but not constantly or continuously.

**Slight/None:** Performance of the task is only minimally impaired; e.g., 90 percent or more of normal, and the activity can be engaged in constantly or continuously during an eight hour workday.

#### Understanding & Memory

	<b>None or Slight</b>	<b>Moderate</b>	<b>Moderately Severe</b>	<b>Severe</b>
Ability to remember locations and work-like procedures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to understand and remember short and simple (1 or 2 step) repetitive instructions or tasks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to understand and remember detailed (3 or more steps) instructions which may or may not be repetitive	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

#### Sustained Concentration & Persistence

Ability to carry out short and simple (1 or 2 step) repetitive instructions or tasks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to carry out detailed (3 or more steps) instructions which may or may not be repetitive	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to maintain attention and concentration for at least 2 straight hours with at least 4 such sessions in a workday	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to sustain ordinary routine without special supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to work in coordination with or proximity to others without being distracted	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to make simple work-related decisions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to complete a normal workday and work week without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rests	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>NAME:</b>	<b>SSAN:</b>
--------------	--------------

	<b>None or Slight</b>	<b>Moderate</b>	<b>Moderately Severe</b>	<b>Severe</b>
<b><u>Social Interaction</u></b>				
Ability to interact appropriately with the general public or customers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to ask simple instructions or request assistance from supervisors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to accept instructions and respond appropriately to criticism from supervisors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>Adaptation</u></b>				
Ability to respond appropriately to expected changes in the work setting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to respond appropriately to unexpected changes in the work setting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to set realistic goals or make plans independently	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to be aware of normal hazards and take necessary precautions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to travel in unfamiliar settings and use public transportation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**EFFECT OF WORK-RELATED STRESSORS**

The following stressors which are typically encountered in the workplace would, in all likelihood increase the level of impairment beyond those indicated above:

- Unruly, demanding, or disagreeable customers even on an occasional or infrequent basis
- Production demands or quotas
- Demands for precision (intolerance of error rates in excess of 5-10%)
- Attendance requirements (intolerance of absenteeism beyond 1 day/month)
- Need to make quick and accurate, independent decisions for problem solving on a consistent basis
- Need to make accurate, independent decisions for problem solving on a consistent basis
- Other (please describe):

Do you consider this individual to be the type of person where a routine, repetitive, simple, entry-level job would actually serve as a stressor which would exacerbate psychological symptoms rather than mitigate stress in the workplace?  Yes  No

Does this individual have a medically/psychologically determinable impairment which could reasonably be expected to produce the symptoms which they describe?  Yes  No

<b>NAME:</b>	<b>SSAN:</b>
--------------	--------------

The patient alleges onset of disability as of \_\_\_\_\_. In your medical opinion, would the above-stated limitations be considered to exist since that date?  Yes  No

If "No", state the earliest date, thereafter, you consider these limitations to have existed and *why* you decided on this date:

If "Yes", this opinion is based on the following factors:

- My examination(s) of the claimant
- The claimant's history as available to me from records I routinely rely on in my specialty
- The claimant's history as available to me from other informational sources (family friends, etc.)
- The claimant's history as relayed to me by the claimant; said history which I deem to be reliable and consistent with the nature and severity of the clinical condition I observe.
- My education.
- My training
- My experience

\_\_\_\_\_  M.D.  PH.D. \_\_\_\_\_ DATE

**Multiple Sclerosis Questionnaire**

NAME:

SSAN:

1. Nature of contact:  Diagnosis and ongoing treatment  Diagnosis/Assessment Only  
 Surgical Consultation  Other (describe):
2. Frequency of contact:  Once only  Weekly  Bi-weekly  Monthly  Quarterly  Semi-Annually
3. Approximate date of first evaluation/treatment: \_\_\_\_\_
4. Does your patient have Multiple Sclerosis?  Yes  No

If "yes", which objective tests confirm this diagnosis?

- MRI  Physical examination findings (please complete attached Neurological Impairment Form)  
 Spinal Tap  CT Scan  Other (please describe): \_\_\_\_\_

5. Identify all of your patient's symptoms:

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Fatigue   | <input type="checkbox"/> Pain                                  | <input type="checkbox"/> Balance problems               |
| <input type="checkbox"/> Difficulty Remembering                              | <input type="checkbox"/> Poor Coordination                     | <input type="checkbox"/> Depression                     |
| <input type="checkbox"/> Weakness  | <input type="checkbox"/> Emotional Lability                    | <input type="checkbox"/> Paralysis                      |
| <input type="checkbox"/> Difficulty Solving Problems                         | <input type="checkbox"/> Unstable Walking                      | <input type="checkbox"/> Problems with Judgment         |
| <input type="checkbox"/> Numbness, tingling, or<br>other sensory disturbance | <input type="checkbox"/> double or blurred vision              | <input type="checkbox"/> Partial or complete blindness  |
| <input type="checkbox"/> Bladder problems                                    | <input type="checkbox"/> Increased muscle tension (spasticity) | <input type="checkbox"/> Involuntary rapid eye movement |
| <input type="checkbox"/> Sensitivity to heat                                 | <input type="checkbox"/> Shaking or tremor                     | <input type="checkbox"/> Bowel Problems                 |
|  | <input type="checkbox"/> Speech/communication difficulties     | <input type="checkbox"/> Other: _____                   |

6. Have your patient's impairments lasted or can they be expected to last at least twelve months?  YES  NO

7. Your patient states that he/she can do the following (completed based on client's own statements).

- Sit \_\_\_\_\_ at one time
- Stand \_\_\_\_\_ at one time
- Walk \_\_\_\_\_ at one time, taking \_\_\_\_\_ before needing to rest \_\_\_\_\_.
- Lift \_\_\_\_\_ pounds occasionally and \_\_\_\_\_ pounds frequently.
- Work (not resting or reclining; i.e., alternating only between sitting, standing and walking) no more than \_\_\_\_\_ hours in a row before needing to rest (lying, reclining and/or sleeping) at least \_\_\_\_\_ hrs/mins.

Does your patient have a medically determinable condition which could reasonably be expected to produce these limitations?  YES  NO

8. Have these limitations existed since at least \_\_\_\_\_, 20\_\_\_\_?  YES  NO

9. Is your patient a malingerer?  YES  NO

\_\_\_\_\_, M.D.

\_\_\_\_\_, DATE

## Multiple Sclerosis Questionnaire

NAME:

SSAN:

### STRENGTH

**Grading:** 0 = No movement    1 = Trace or Flicker of Movement at the Joint    2 = Movement with gravity eliminated  
 3 = Movement against gravity    4 = Movement Against Gravity and Resistance (moderate, but not normal)  
 5 = Normal

#### Upper Extremities

	RIGHT	LEFT
Deltoid	_____	_____
Biceps	_____	_____
Triceps	_____	_____
Flexors, Forearm	_____	_____
Extensors, Forearm	_____	_____
Grip	_____	_____
Manual Dexterity	_____	_____

#### Lower Extremities

	RIGHT	LEFT
Gluteus	_____	_____
Ileo-psoas	_____	_____
Quadriceps	_____	_____
Hamstrings	_____	_____
Calf	_____	_____
Dorsiflex	_____	_____

### COORDINATION, GAIT & STATION

**Note:** Please be sure any abnormalities are adequately described in a narrative report if one is written.

Please mark each item below indicating one of the following:

N = Normal                  A = Abnormal

If Abnormal, please grade degree of dysfunction as:

1 = Mild                  2 = Moderate                  3 = Severe

#### COORDINATION

	RIGHT	LEFT
Finger to Nose	_____	_____
Heel to Shin	_____	_____

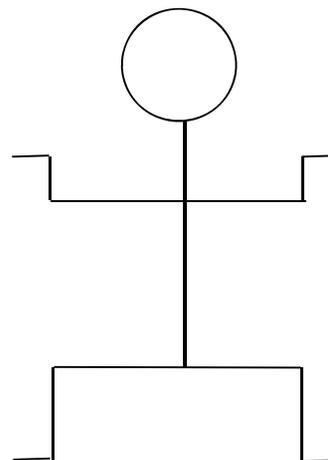
#### GAIT

	RIGHT	LEFT
On Toes	_____	_____
On Heels	_____	_____
Hopping	_____	_____
Arm-Swing	_____	_____
Straight Away	_____	_____
Tandem	_____	_____

#### STATION

	RIGHT	LEFT
Standing	_____	_____
Romberg	_____	_____
One Foot	_____	_____

### REFLEXES



Grading of Reflexes

0 = None  
 1 = Depressed  
 2 = Normal  
 3 = Hyperactive  
 4 = Clonus

BABINSKI (circle one)

Present                  Absent

Without assistance or support, can your patient

- walk a block at a reasonable pace on rough or uneven surfaces
- use standard public transportation
- carry out routine ambulatory activities, such as shopping and banking
- climb a few steps at a reasonable pace with the use of a single hand rail

- |                              |                             |  |
|------------------------------|-----------------------------|--|
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | <input type="checkbox"/> WITH DIFFICULTY |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | <input type="checkbox"/> WITH DIFFICULTY |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | <input type="checkbox"/> WITH DIFFICULTY |
| <input type="checkbox"/> YES | <input type="checkbox"/> NO | <input type="checkbox"/> WITH DIFFICULTY |

## Multiple Sclerosis Questionnaire

NAME:

SSAN:

With respect to any disorganization of motor function of an upper extremity, does the disorganization of motor function interfere with the use of fingers, hands and arms?

Yes       No

(if yes, indicate severity of interference for each extremity, below)

### LEFT UPPER EXTREMITY

Does interfere with fine, dexterous movements; e.g., using hand tools such as screw drivers or soldering guns, putting small objects together, picking up change with fingers or threading a needle.

#### Degree of interference\*

- Severe
- Moderately Severe
- Moderate
- Mild

Does interfere with gross dexterous movements; e.g., using hands or fingers to push buttons or manipulate switches, writing or cutting meat with a knife and fork.

#### Degree of interference

- Severe
- Moderately Severe
- Moderate
- Mild

### RIGHT UPPER EXTREMITY

Does interfere with fine, dexterous movements; e.g., using hand tools such as screw drivers or soldering guns, putting small objects together, picking up change with fingers or threading a needle.

#### Degree of interference

- Severe
- Moderately Severe
- Moderate
- Mild

Does interfere with gross dexterous movements; e.g., using hands or fingers to push buttons or manipulate switches, writing or cutting meat with a knife and fork.

#### Degree of interference

- Severe
- Moderately Severe
- Moderate
- Mild

---

\*Severe - Indicates that the activity is precluded on a sustained basis.

Moderately Severe - Indicates that the activity is not totally precluded but is substantially impaired in terms of speed and accuracy and can only be engaged in occasionally or seldom during an eight hour day.

Moderate - Indicates that speed and accuracy are somewhat impaired and can be engaged in occasionally to frequently (but not constantly or continuously) during an eight hour day.

Mild - Speed and accuracy are only minimally impaired; e.g., 85% of normal, and the activity can be engaged in constantly or continuously during an eight hour day.

**Multiple Sclerosis Questionnaire**

NAME:

SSAN:

With respect to any disorganization of motor function of a lower extremity, does the disorganization of motor function interfere with locomotion?

- Yes     No

(if yes, answer remainder of this page)

**LEFT LOWER EXTREMITY**

**RIGHT LOWER EXTREMITY**

- Does interfere with walking.  
Please describe gait, briefly:

- Does interfere with walking.  
Please describe gait, briefly:

Degree of interference\*

Degree of interference

- Severe  
 Moderately Severe  
 Moderate  
 Mild

- Severe  
 Moderately Severe  
 Moderate  
 Mild

- Does interfere with standing.  
Please describe station, briefly:

- Does interfere with standing.  
Please describe station, briefly:

Degree of interference

Degree of interference

- Severe  
 Moderately Severe  
 Moderate  
 Mild

- Severe  
 Moderately Severe  
 Moderate  
 Mild

---

\*Severe - Indicates that the activity is totally precluded on a sustained basis and would result in falling after short duration; e.g., 10 - 15 minutes or 2 - 3 blocks.

Moderately Severe - Indicates that the activity is not totally precluded but is substantially impaired in terms of speed or endurance and can only be engaged in occasionally or seldom during an eight hour day; e.g, short durations not totaling more than two hours in an eight hour day.

Moderate - Indicates that speed and duration are somewhat impaired but can be engaged in occasionally to frequently (but not constantly or continuously) during an eight hour day.

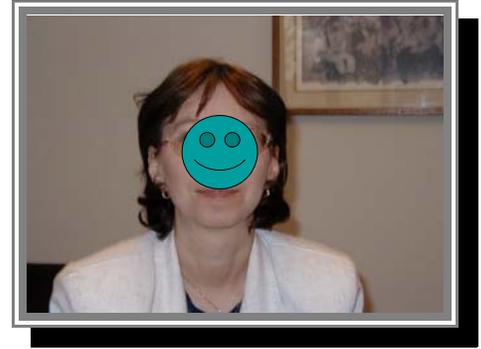
Mild - Speed and duration are only minimally impaired; e.g., 85% of normal, and the activity can be engaged in constantly or continuously during an eight hour day.



# APPENDIX F

## SUMMARY OF CLAIMANT'S VOCATIONAL PROFILE<sup>1</sup>

NAME:	SSAN:
-------	-------



- Age
  - Birthday: January 17, 1958
  - Current age: 43
  - Age at onset (onset date: January 12, 2001): 42
- Education: Two years of college
- Vocational Training: Licensed Practical Nurse Training (1990)
- Past Relevant Work

Begin	End	Title	Sit	Stand	Walk	Bend*	Lift
1985	01/01	Certified Nursing Assistant & Licensed Practical Nurse	30 min	4	4	F	120#

\*(O)ccasional = 0% - 33% of day (F)requent = 33% - 66% of day (C)onstant = >66% of day

\_\_\_\_\_  
August 1, 2002  
DATE

For the convenience of the Court, the Claimant attaches, hereto, an abstract for each job, above, from the *Dictionary of Occupational Titles (4th Ed. 1991)*, *Characteristics of Occupations, Revised (1992)*, and the *1991 Revised Handbook for Analyzing Jobs (1991)*; publications recognized by the Secretary as providing reliable job information. 20 C.F.R. §404.1566(d). Those abstracts are produced through software which reproduces, verbatim, information contained in those publications.

\_\_\_\_\_  
<sup>1</sup>This form is being provided by the claimant prior to having had access to the Claims File and is subject to amendment after having reviewed the documentary evidence.

**355.674-014 NURSE ASSISTANT** (medical ser.) alternate titles: nurse aide

Performs any combination of following duties in care of patients in hospital, nursing home, or other medical facility, under direction of nursing and medical staff: Answers signal lights, bells, or intercom system to determine patients' needs. Bathes, dresses, and undresses patients. Serves and collects food trays and feeds patients requiring help. Transports patients, using wheelchair or wheeled cart, or assists patients to walk. Drapes patients for examinations and treatments, and remains with patients, performing such duties as holding instruments and adjusting lights. Turns and repositions bedfast patients, alone or with assistance, to prevent bedsores. Changes bed linens, runs errands, directs visitors, and answers telephone. Takes and records temperature, blood pressure, pulse and respiration rates, and food and fluid intake and output, as directed. Cleans, sterilizes, stores, prepares, and issues dressing packs, treatment trays, and other supplies. Dusts and cleans patients' rooms. May be assigned to specific area of hospital, nursing home, or medical facility. May assist nursing staff in care of geriatric patients and be designated Geriatric Nurse Assistant (medical ser.). May assist in providing medical treatment and personal care to patients in private home settings and be designated Home Health Aide (medical ser.).

GOE: 10.03.02 DLU: 89

- STRENGTH: M - Medium Work - Exerting 20 to 50 pounds of force occasionally, and/or 10 to 25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Light Work
- SPECIFIC VOCATIONAL PREPARATION(4): Over 3 months up to and including 6 months

**APPENDIX G**

**SAMPLE TRIAL MEMOS**

**MEMORANDUM**

TO: File of (SSN: )  
FROM: BKB  
DATE: August 26, 2015  
RE: Trial Memorandum

---

Hearing Date:

ALJ:

OFFICE:

HA:

VE:

END:

BEGIN: \_\_\_\_\_(FIELD(484))

TOTAL:

**CLAIMS**

TITLE II (DIB): APPLICATION DATE:

- AOD: \_\_\_\_\_ DLI: \_\_\_\_\_
- SPOUSE: \_\_\_\_\_ CHILD 1: \_\_\_\_\_ CHILD 2: \_\_\_\_\_ CHILD 3: \_\_\_\_\_

TITLE XVI (SSI): APPLICATION DATE: FIELD(482)

TITLE II (DWB): APPLICATION DATE:

- PRESCRIBED PERIOD: \_\_\_\_\_ TO \_\_\_\_\_
  - BEGINNING DATE: (LATEST OF)  
WAGE EARNER'S DEATH:  
LAST ENT. TO MOTHER'S BENEFITS:
  - END DATE (EARLIEST OF)  
MONTH PRIOR TO AGE 60:  
84 MONTHS + BEGIN DATE:

**PRIOR APPLICATIONS:**

	<u>DATE</u>	<u>INITIAL DENIAL DATE</u>	<u>LAST DENIAL DATE/STAGE</u>
1.			
2.			
3.			

**ADMISSION OF EVIDENCE**

Objections: None

Admitted: 1 - \_\_\_\_\_

**DIRECT EXAMINATION**

**I. INTRODUCTION**

- Name
- Address

● **Live with:**

- Spouse (Employed?  Yes  No)
- S/O (Employed?  Yes  No)
- Children
- Other: \_\_\_\_\_

- House  Townhouse    Number of floors: \_\_\_\_\_ Bedroom on \_\_\_\_\_
- Apartment     Trailer
- Steps outside \_\_\_\_\_ • Stairs inside \_\_\_\_\_
- County \_\_\_\_\_

● Marital Status:

● Children under age of 18

- \_\_\_\_\_ (Age: \_\_\_\_\_)
- \_\_\_\_\_ (Age: \_\_\_\_\_)
- \_\_\_\_\_ (Age: \_\_\_\_\_)

● Birthday/Age: \_\_\_\_\_ age: \_\_\_\_\_

● Education -

● Vocational Training -

- Ever used

● Income

- Spouse: \$ \_\_\_\_\_ per  week  biweekly  month since : \_\_\_\_\_
- Welfare/GR \$ \_\_\_\_\_  Food Stamps \$ \_\_\_\_\_
- Private Health Ins  Medicaid  VCC  No Insurance Coverage
- W/C?  No  Yes from \_\_\_\_\_ to \_\_\_\_\_
  - \$ \_\_\_\_\_ per  week  biweekly  month since : \_\_\_\_\_
  - Settled: When: \_\_\_\_\_ \$ \_\_\_\_\_ (net) + \_\_\_\_\_ med cov.

● U/C  No  Yes from \_\_\_\_\_ to \_\_\_\_\_

● Personal Injury  No  Yes \_\_\_\_\_

● Private LTD: \$ \_\_\_\_\_ per month since \_\_\_\_\_

● Pensions: \$ \_\_\_\_\_ per month since \_\_\_\_\_

● Significance of Alleged Onset Date

● Work since Alleged Onset Date

<b>Handed:</b> <input type="checkbox"/> Right <input type="checkbox"/> Left <input type="checkbox"/> Both
<b>HT:</b> ____' ____"
<b>WT:</b> _____#
<input type="checkbox"/> stable
<input type="checkbox"/> gained _____#
<input type="checkbox"/> Nervous Eater
<input type="checkbox"/> Inactivity due to _____
<input type="checkbox"/> lost _____#
<input type="checkbox"/> Intentional <input type="checkbox"/> Doctor's Advice
<input type="checkbox"/> No Appetite due to _____

II. VOCATIONAL PROFILE (Work History: [Exhibit E](#))

Begin	End	Title	Sit	Stand	Walk	Lift	Skill	Exert

- Tools/Machines/Equipment:  hand tools     computers     office equipment
- Reports:  Inventory     Analysis v.  data entry
- Technical Knowledge
- Supervisory:  hire/fire     work schedules     job performance     pay raises

<b><u>SKILLS</u></b>	<b>ACQUIRED IN</b>	<b>TRANSFERABLE TO</b>
① _____	_____	<input type="checkbox"/> Sedentary <input type="checkbox"/> Light
② _____	_____	<input type="checkbox"/> Sedentary <input type="checkbox"/> Light
③ _____	_____	<input type="checkbox"/> Sedentary <input type="checkbox"/> Light
④ _____	_____	<input type="checkbox"/> Sedentary <input type="checkbox"/> Light
<input type="checkbox"/> No Skills <input type="checkbox"/> Skills not transferrable (job specific)		

III. MEDICAL CONDITION: **BACK**

OBJECTIVE	EX	PG
<ul style="list-style-type: none"> <li>● Limited Range of Motion</li> <li>● Muscle Spasm</li> <li>● Decreased Sensation</li> <li>● Decreased Reflexes</li> <li>● Motor Loss</li> <li>● Muscle Weakness</li> </ul>		
Radiology		
Surgical History		

● 1529 Description

- Location
  - Low back  Neck
  - Mid back  Between Shoulders

- Radiation
 

	Right	Left
● Buttocks	<input type="checkbox"/>	<input type="checkbox"/>
● Thighs	<input type="checkbox"/>	<input type="checkbox"/>
● Calves	<input type="checkbox"/>	<input type="checkbox"/>
● Ankles	<input type="checkbox"/>	<input type="checkbox"/>
● Feet	<input type="checkbox"/>	<input type="checkbox"/>
● Toes	<input type="checkbox"/>	<input type="checkbox"/>
● Shoulder	<input type="checkbox"/>	<input type="checkbox"/>
● Elbows	<input type="checkbox"/>	<input type="checkbox"/>
● Hands	<input type="checkbox"/>	<input type="checkbox"/>

- Frequency
  - Continuous
  - Several x's/day
  - \_\_\_ times per \_\_\_\_\_
- Duration
  - Continuous
  - \_\_\_  mins.  hrs.
- Intensity
 

1 2 3 4 5 6 7 8 9 10
- Character
  - Burning  Electrical
  - Sharp  Aching

● Treatment

- PHYSICIAN: \_\_\_\_\_ since \_\_\_\_\_
- Frequency:  weekly  bi-weekly  monthly  bi-monthly  quarterly  6 months
- Treatment
  - RX (current: **Exhibit E** History: **Exhibit E**)
    - side effects
  - SX
    - past results
    - future
  - Other modalities:  cane  back brace  TENS unit  Other
    - Nerve Blocks
    - Steroid Injections
    - Ablations
  - PT: \_\_\_ x's per week from \_\_\_\_\_ to \_\_\_\_\_ (**Exhibit F**)

**Basic Work Activities**

- Sit (at one time) \_\_\_  min  hrs
- Stand (at one time) \_\_\_  min  hrs
- Walk (at one time) \_\_\_  min  hrs  
 \_\_\_  ft  yds  blocks  miles
- Lift \_\_\_ pounds  freq.  occ.  once
- Bend at the waist  yes  no
- Grip
 

	Yes	No	Difficulty
● Gallon of milk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
● Write	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
● Cut meat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Stamina
  - # of rest periods per day \_\_\_\_\_
  - Duration: \_\_\_  mins  hrs
- Good Days (define) per month: \_\_\_\_\_
- Bad Days (define) per month: \_\_\_\_\_

III. MEDICAL CONDITIONS: MAJOR DEPRESSION

NOTES FROM EXHIBIT FILE

● GAF

\_\_\_\_\_ Dr. \_\_\_\_\_ Date: \_\_\_\_\_ Exhibit \_\_\_ page \_\_\_  
\_\_\_\_\_ Dr. \_\_\_\_\_ Date: \_\_\_\_\_ Exhibit \_\_\_ page \_\_\_

● ROGS (Exhibit \_\_\_ page \_\_\_)

- ADL's  none  slight  moderate  marked  extreme
- Social  none  slight  moderate  marked  extreme
- Think  never  seldom  often  frequent  constant
- Crash  never  once or twice  repeated (3 or more)  continual

TESTIMONY

● Describe

- Frequency  constant  daily (\_\_\_ x/day)  weekly (\_\_\_ x/week)  monthly (\_\_\_x/month)

• Duration

• Effect

- Days per month when don't get out of bed: \_\_\_\_\_
- Days per month when don't get dressed: \_\_\_\_\_
- Days per month when don't bathe: \_\_\_\_\_
- Days per month when don't eat for the day: \_\_\_\_\_

- Crying jags  Yes (frequency: \_\_\_\_\_ duration: \_\_\_\_\_)  No

• Friends

- Anhedonia or pervasive lost of interest in almost all activities
- Appetite disturbance with change in weight;
- Sleep disturbance;
- Psychomotor agitation or retardation
- Decreased energy;
- Feelings or guilt or worthlessness;
- Difficulty concentrating or thinking
- Thoughts of suicide
- Hallucinations, delusions or paranoid thinking

- EXACERBATING FACTORS

- People  Deadlines  Accuracy  Seasonal
- Supervision by  Supervision over  Responsibility

● Treatment

- PHYSICIAN: \_\_\_\_\_ since \_\_\_\_\_
- Frequency:  weekly  bi-weekly  monthly  bi-monthly  quarterly  6 months
  - referrals
- Treatment
  - RX
  - side effects:  drowsy  sleep  blurred vision  dry mouth
  - Other: \_\_\_\_\_

• Counselor: \_\_\_\_\_

- Frequency:  weekly  bi-weekly  monthly  bi-monthly  quarterly  6 months
  - referrals
- Treatment

IV. ACTIVITIES OF DAILY LIVING - FUNCTION REPORTS/OTHER

- FUNCTION REPORT (DATE: ) **EX E**

ACTIVITY	FREQUENCY	DURATION	NOTES
• CHILD CARE			
• SLEEP			
• PERSONAL CARE			
• COOK/MEALS			
• HOUSEWORK/CLEANING			
• YARD WORK			
• DRIVING			
• SHOPPING			
• HOBBIES/INTERESTS			
• SOCIAL			
• TV			
• READING			
• COMPUTER			
• PETS			

IV. ADL

• Home

- h/h
  - cook
  - clean
  - laundry
  - bills
- yard
  - maintenance
  - grass

Typical Day

Up: \_\_\_\_\_ a.m. p.m.

Morning

• Away

- Drive (D/L?  yes  no)
  - # of times per week \_\_\_\_\_
  - Average distance/week: \_\_\_\_\_
  - Typical Errand: \_\_\_\_\_
- Shop
  - Grocery Shop
    - (\_\_\_\_\_ times per \_\_\_\_\_)
    - with help from \_\_\_\_\_
    - without help

Afternoon

• Social

- friends/family
- Church
- Clubs
- Sporting Activities

• Daily routine

- care for personal needs
- sleep
- appetite
- naps
- hobbies/keep mind occupied

Evening

Read:  yes  no  With difficulty (explain):

Watch TV:  yes (# hrs/day: \_\_\_\_\_)  no

Bedtime: \_\_\_\_\_ a.m. p.m.

## CLOSING MOTIONS

### I. Consultative Examinations

- Type:
- Basis:
- Grant       Deny       Advisement

- Type:
- Basis:
- Grant       Deny       Advisement

### II. Closing Argument

**1.04 Disorders of the spine** (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

- A. Evidence of nerve root compression characterized by
- neuro-anatomic distribution of pain,
  - limitation of motion of the spine,
  - motor loss (atrophy with associated muscle weakness or muscle weakness)

accompanied by

- sensory **or** reflex loss

**and**, if there is involvement of the lower back,

- positive straight-leg raising test (sitting and supine);

or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

**GRID RULE:** \_\_\_\_\_

Age at onset: \_\_\_\_\_ Education: \_\_\_\_\_

Past Work  Unskilled  Skills Not Transferrable (why)

Record Open: \_\_\_\_\_ days  
For:

Record Closed - Ready for a Decision

**MEMORANDUM**

TO: File of R [REDACTED] S [REDACTED] (SSN: [REDACTED])  
FROM: BKB  
DATE: April 9, 2015  
RE: Trial Memorandum

---

Hearing Date: [REDACTED]

ALJ: [REDACTED]

OFFICE: Richmond Hearing Room: 2

HA:

VE: Stroud

END:
BEGIN: _____ (9:30 am)
TOTAL:

**CLAIMS**

TITLE II (DIB): APPLICATION DATE: December 14, 2012

- AOD: October 31, 2013 (as amended)(6D) DLI: December 31, 2016
- SPOUSE: [REDACTED] - SEPARATED (children grown)

TITLE XVI (SSI): APPLICATION DATE: None

**PRIOR APPLICATIONS**: None

**ADMISSION OF EVIDENCE**

Objections: None

Description	Dates	# pgs.	Ex #

Admitted: 1 - \_\_\_\_\_

## DIRECT EXAMINATION

### I. INTRODUCTION

- Name
- Address

████████████████████  
Fredericksburg, VA ██████████

● **Live with:**

- Spouse (Employed?  Yes  No)
- Children
- Other: \_\_\_\_\_

- House  Townhouse    Number of floors: \_\_\_\_\_ Bedroom on \_\_\_\_\_
  - Steps outside \_\_\_\_\_ • Stairs inside \_\_\_\_\_
- County \_\_\_\_\_

● Marital Status: ██████████ - **SEPARATED? MARRIAGE OVER?**

● Children under age of 18: **Grown**

● **GRANDCHILDREN**

● Birthday/Age: **2/8/1958** age: **57**

● Education - **some college (about 3 years credit) HS**

• 02/2014: **10E/2: Go to school (struggle w/ lectures and understanding (10E/7)**

● Vocational Training: **None other than OJT**

• 01/12/15 (**12F/4**): **Continues to culinary school (Stratford University)**

- Recommendation of therapist to get her out of the house
- Started: February, 2014 Last class was last month - unable to finish
  - Took 5 culinary classes (5 weeks for most) - finished 3
  - classes are 1/week (9:00 a.m. - 1:00 p.m.)
- Was needing to go to bathroom because of panic attacks when the pressure was one (tests)
- Professors were giving a lot of leeway
- Girlfriend (██████████) (**21E**) was staying late to help finish things
- Didn't ask for accommodations - "didn't want to go public"

● Military: **U.S. Army From 08/19/xx to xx/xx/2005 D/C  Hon 01/31/05 (18E)**

• 04/13/12 (**6F/84**): **Case is going to court 04/25/12**

<b>Handed:</b> <input type="checkbox"/> Right <input type="checkbox"/> Left <input type="checkbox"/> Both
<b>HT:</b> ____' ____"
<b>WT:</b> _____#
<input type="checkbox"/> stable
<input type="checkbox"/> gained _____#
<input type="checkbox"/> Nervous Eater
<input type="checkbox"/> Inactivity due to _____
<input type="checkbox"/> lost _____#
<input type="checkbox"/> Intentional <input type="checkbox"/> Doctor's Advice
<input type="checkbox"/> No Appetite due to _____

●Income

- Spouse: \$ \_\_\_\_\_ per  week  biweekly  month since : \_\_\_\_\_
- Private Health Ins  Medicaid  VCC  No Insurance Coverage
- W/C?  No  Yes from \_\_\_\_\_ to \_\_\_\_\_
- U/C  No  Yes from \_\_\_\_\_ to \_\_\_\_\_
  - 4<sup>th</sup> Quarter (2013): \$4,902.00 (3D/2)
  - 3<sup>rd</sup> Quarter (2013): \$7,182.00 (3D/2)
- Pensions (VA - see 8D): \$ 34,496.00 per year (8D) since \_\_\_\_\_
  - VA retirement (years of service): \$3,000+ since \_\_\_\_\_
  - VA (disability)(2005 - 2006): 70% : \$1,423.40 (18E) since 01/01/14
- Significance of **October 31, 2013 (as amended): See 6D (after U/C and age 55)**
  - 6F/84-85: **MAKING MISTAKES AT WORK VS. “No basis to substantiate bad evaluation” (6F/84)**
  - 3E/19: **Your last full day of work was August 27, 2012. You have amassed more than 750 hours of LWOP - HOW DOES THAT HAPPEN???**
- Work since **October 31, 2013 (as amended): None**

II. VOCATIONAL PROFILE (Work History: **Exhibit 4E**) - **SEPARATED FROM SERVICE (3E/19 - 22)**

Begin	End	Title	Sit	Stand	Walk	Bend	Lift	Skill	Exert
02/09	08/12	Manpower Analyst (U.S. Army)	4	1	2		10#		
02/05	01/09	Sr. Human Resources Mgr (U.S. Army)	3	2	2		10#		
08/80	01/05	Human Resources Manager (U.S. Army)	5	1	2		20#		

• ABILITY TO DO THIS?

• PEOPLE

• COGNITIVE/ANALYTICS/JUDGMENT

• STRESSORS (other than people and need for accuracy)

• Deadlines

• Tools/Machines/Equipment:  hand tools     computers     office equipment

• Reports:  Inventory     Analysis v.  data entry

• Technical Knowledge

• Supervisory:  hire/fire     work schedules     job performance     pay raises

**SKILLS**

**ACQUIRED IN**

**TRANSFERABLE TO**

① \_\_\_\_\_  Sedentary     Light

② \_\_\_\_\_  Sedentary     Light

③ \_\_\_\_\_  Sedentary     Light

④ \_\_\_\_\_  Sedentary     Light

No Skills     Skills not transferrable (job specific)

### III. MEDICAL CONDITIONS: MAJOR DEPRESSION

#### NOTES FROM EXHIBIT FILE

#### ● GAF

<u>60</u>	Dr. <u>          </u>	Date: <u>10/10/13</u>	<u>Exhibit 10F</u>	<u>page 27</u>
<u>60</u>	Dr. <u>          </u>	Date: <u>11/23/12</u>	<u>Exhibit 10F</u>	<u>page 9</u>
<u>50</u>	Dr. <u>          </u>	Date: <u>09/04/12</u>	<u>Exhibit 2F</u>	<u>page 7</u>
<u>30</u>	Dr. <u>          </u>	Date: <u>08/28/12</u>	<u>Exhibit 6F</u>	<u>page 41</u>

#### TESTIMONY

#### ● Describe

- Frequency  constant  daily (\_\_\_ x/day)  weekly (\_\_\_ x/week)  monthly (\_\_\_x/month)

#### • Duration

#### • Effect

- Days per month when don't get out of bed: \_\_\_\_\_
- Days per month when don't get dressed: \_\_\_\_\_
- Days per month when don't bathe: \_\_\_\_\_
- Days per month when don't eat for the day: \_\_\_\_\_

- Crying jags  Yes (frequency: \_\_\_\_\_ duration: \_\_\_\_\_)  No

- **04/23/12 (7F/211): Teary eyed throughout exam**

#### • Friends

Anhedonia or pervasive lost of interest in almost all activities

Appetite disturbance with change in weight;

Sleep disturbance;

- **12/09/14 (12F/6): ...she still has some issues with sleep; since 10/2014 she has had reduced sleep (only 2-3 hours per night) and as a result she has to take a nap around 1 pm.**

- **09/11/13 (10F/32): Still sleeping too much**

- **07/30/13 (10F/41): Often spends most of the day in bed ruminating or sleeping**

Psychomotor agitation or retardation

- **12/09/14 (12F/7): Affect - sad, depressed**

- **01/22/14 (10F/10): Mood: depressed, angry**

- **10/10/13 (10F/27): Affect/Mood: Depressed, Anxious**

Decreased energy;

- **01/22/14 (10F/10): Looks tired**

- **10/28/13 (10F/22): Sleeping too much and energy not back to normal**

Feelings or guilt or worthlessness;

- **01/22/14 (10F/10): Trying hard to restore her integrity and self-confidence**

- **10/28/13 (10F/22): distorted self blame; guilty about not bringing in income**

Difficulty concentrating or thinking

- **12/09/14 (12F/7): MSE: Attention/concentration: reduced ability to concentrate for prolonged periods of time.**

- **02/06/13 (6F/32): Memory loss - can't remember own phone # - pseudodementia 2° Anxiety**

Thoughts of suicide

- **07/10/13 (10F/49): Suicidal thoughts**

Hallucinations, delusions or paranoid thinking

- **09/11/13 (10F/32): She ran out of the grocery store after hearing voices call her name**

- **08/27/13 (10F/38): Endorses paranoid ideation**

#### - EXACERBATING FACTORS

- People  Deadlines  Accuracy  Seasonal
- Supervision by  Supervision over  Responsibility

- Treatment
  - (Medicine)
    - Frequency:  weekly  bi-weekly  monthly  bi-monthly  quarterly  6 months
      - referrals
    - Treatment
      - RX
        - side effects:  drowsy  sleep  blurred vision  dry mouth
        - Other: \_\_\_\_\_
  - Counselor: \_\_\_\_\_
    - Frequency:  weekly  bi-weekly  monthly  bi-monthly  quarterly  6 months
      - referrals
    - Treatment

### III. MEDICAL CONDITIONS - ANXIETY DISORDER

- Describe an attack
  - Frequency
  - Duration
  - Effect
    - During
    - After
- Motor tension
- Autonomic hyperactivity
- Apprehensive expectation
- Vigilance and scanning
- A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation
- Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week
- Recurrent obsessions or compulsions which are a source of marked distress
- Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress
- Hallucinations, delusions or paranoid thinking

- People
  - Strangers
  - Crowds vs. □ Individuals
  - Family
  - Friends
- Unfamiliar Situations (hearing?)
- Rushed
- Other
- Treatment
  - (Medicine)
    - Frequency: \_\_\_\_\_
      - referrals
    - Treatment
      - RX
        - side effects
      - SX
        - past
          - results
        - future

III. MEDICAL CONDITIONS: **ARTHRITIS OF THE LOWER EXTREMITIES**

PHYSICAL EXAM	EX/PG
<ul style="list-style-type: none"> <li>• 05/17/13 - Left knee crepitus</li> <li>• 05/07/13 - Left knee crepitus; positive inhibition sign</li> <li>• 03/20/13 - Right knee crepitus; positive inhibition sign</li> <li>• 03/07/13 - Right knee crepitus; positive inhibition sign</li> <li>• 06/21/12 - decreased knee synovitis and small effusion</li> <li>• 06/12/12 - Mild knee synovitis with small effusion</li> <li>• 05/29/12 - Mild Left knee synovitis. Left knee ROM 110°</li> <li>• 05/22/12 - Mild Left knee synovitis. Left knee ROM 110°</li> <li>• 05/17/12 - Mild Left knee synovitis. Left knee ROM 110°</li> <li>• 04/12/12 - bilateral knee synovitis and effusion</li> <li>• 01/18/12 - positive patellar grind and quad inhibition tests</li> </ul>	<p>7F/125 7F/127 7F/144 7F/150 7F/182 7F/189 7F/194 7F/199 7F/201 6F/86 6F/123</p>
<p>Radiology</p> <ul style="list-style-type: none"> <li>• 01/18/12 - MRI of both knees was performed. Cartilage defects of both patella and trochlea bilaterally, grade III signal in Right knee MM and Left knee LM</li> <li>• 12/06/11 - several areas of pathology probably the most symptomatic of which is the osteochonral defect in the trochlea. Despite PT, ESI and Hyalgan injections, pts. symptoms have not improved</li> <li>• 01/05/10 - Greatest degree of joint space narrowing is seen along the lateral patellofemoral joint compartment...consistent with significant grade 2 chondromalacia patella</li> </ul>	<p>7F/430 6F/146 7F/111</p>
<p>Surgical History</p> <ul style="list-style-type: none"> <li>• 12/06/11 - Patient REQUESTING surgery</li> </ul>	<p>6F/146</p>

• 1529

**Basic Work Activities**

- Location
- Frequency
  - Continuous
  - Daily but intermittent
  - \_\_\_ per \_\_\_\_\_
- Intensity
  - Severe  Moderate  Mild
  - Scale of 1 - 10: 1 2 3 4 5 6 7 8 9 10
- Character
  - Sharp  Dull  Burning
  - Tingling  Electrical
  - Squeezing  Cramping
- Exacerbated by
  - Walking  Standing
  - Sitting  Lifting \_\_\_\_\_#
- Sit (at one time)
  - \_\_\_  min  hrs
- Stand (at one time)
  - \_\_\_  min  hrs
- Walk (at one time)
  - \_\_\_  min  hrs
  - \_\_\_  ft  yds  blocks  miles
- 01/12/15 (12F/4): **working out each day to help work off stress.**
- Stairs
- Uneven ground
- Lift
  - \_\_\_ pounds  freq.  occ.  once
- Stamina
  - # of rest periods per day \_\_\_\_\_
  - Duration: \_\_\_  mins  hrs
- Good Days (define) per month: \_\_\_\_\_
- Bad Days (define) per month: \_\_\_\_\_

- Treatment:

- RX (current: **Exhibit E** History: **Exhibit E**)

- side effects

- SX

- past results

- future

- INJECTIONS

- 05/17/13 (7F/125): **LEFT knee**
- 05/07/13 (7F/128): **LEFT knee**
- 05/02/13 (7F/131): **LEFT knee**
- 03/20/13 (7F/144): **RIGHT knee**
- 03/07/13 (7F/149): **LEFT knee**
- 06/21/12 (6F/56) **RIGHT Knee**
- 06/12/12 (6F/63) **RIGHT Knee**
- 06/05/12 (6F/66) **RIGHT Knee**
- 05/29/12 (6F/68) **LEFT Knee**
- 05/22/12 (6F/72) **LEFT Knee**
- 05/17/12 (6F/75) **LEFT Knee**

IV. ● F/R (03/17/13)(3E; 6E duplicate) ● F/R (02/28/14)(10E) ● F/R (03/18/13)(5E)

ACTIVITY	LENGTH	FREQ	NOTES
<ul style="list-style-type: none"> <li>● COOKING</li> <li>● 3E/4: (H) doesn't want me to use stove</li> <li>● 5E/4: must not be left unattended to cook</li> <li>● 10E/2: With (H) on weekends for rest of wk</li> </ul>	5-6 hrs	Sat & Sun	total hours
<ul style="list-style-type: none"> <li>● CLEANING</li> <li>● 3E/4: I can wash the dishes and do the laundry...iron my clothes and sweep kitchen (also 5E/3)</li> <li>● 5E/6: Light laundry</li> <li>● 10E/4: I have a friend help me clean house</li> </ul>	takes a long time (3E/5) 2-3 hrs 4 hrs	twice a week every 3 wks	I try to do them before (H) gets home but most of the time I don't feel good or I am too tired.
<ul style="list-style-type: none"> <li>● PERSONAL CARE</li> <li>● 3E/3: I can do all even if it takes me much longer</li> <li>● 5E/4: Difficulty sleeping 90% of time</li> <li>● 5E/5: Must remind her to take RX while at home and call from work</li> <li>● 10E/3: No problem</li> <li>● 10E/4: I use my phone alarm to remind RX</li> </ul>			
<ul style="list-style-type: none"> <li>● SOCIALIZING</li> <li>● 3E/6: Church</li> <li>● 3E/6: Food bank (church run?)</li> <li>● 5E/3: makes calls and visits neighbors</li> <li>● 5E/8: Church</li> <li>● 10E/6: Church</li> <li>● 10E/6: Bible Study</li> </ul>		Sundays Wednesday (1-2x/week) (1-2X/week) Sunday Wednesday	DIFFICULTY? GOOD DAY?
<ul style="list-style-type: none"> <li>● DRIVING</li> <li>● 3E/5: I don't like it any more. I am afraid because I have difficulty staying between the lines.</li> <li>● 10E/5: RIDE in a car</li> </ul>		4 x's/week	
<ul style="list-style-type: none"> <li>● SHOPPING</li> <li>● 3E/5: Groceries</li> <li>● 3E/5: Stuff for grandchildren</li> <li>● 5E/7: Groceries</li> <li>● 10E/2: Quantico - groceries</li> </ul>	30-40" 2 hrs	1/week 1/60 days 1/week 1/ 2 weeks	
<ul style="list-style-type: none"> <li>● HOBBIES</li> <li>● 3E/6: I try to walk WHEN I FEEL GOOD</li> <li>● 5E/7: Exercise</li> <li>● 10E/6: Exercise (3 days per week; 7F/6)</li> </ul>	30-40"	2-3 x's/wk 2-3 x's/wk 3 x's/week	Sometimes I don't do it at all
<ul style="list-style-type: none"> <li>● TV</li> <li>● 3E/6: Watch TV</li> </ul>		daily	Most times I fall asleep
<ul style="list-style-type: none"> <li>● READ</li> <li>● 3E/6: I try to read a book</li> <li>● 5E/7: Read</li> </ul>		sometimes daily	Occ I can't understand content sometimes feels depressed and doesn't want to do these things
<ul style="list-style-type: none"> <li>● BILLS</li> <li>● 3E/5: w/ (H)'s help. I forget to pay some</li> <li>● 5E/7: (H) needs to f/u all transactions</li> </ul>			
<ul style="list-style-type: none"> <li>● SCHOOL</li> <li>● 10E/2: Go to school</li> </ul>	9 - 1:30	Mon & Wed	Take a nap when I get home. Tired & stressed as often I cannot comply with assignments

IV. ADL: 12/09/14 (12F/7): Pt. Says she does not want to have family over for 3 years now. Pt. Feels she does not want sympathy from her family as she previously was very independent (she says she would work then take care of the home).....feels sorry for her husband who has to do housework, etc.

- Home
    - h/h
      - cook
      - clean
      - laundry
      - bills
    - yard
      - maintenance
      - grass
  - Away
    - Drive (D/L?  yes  no)
      - # of times per week \_\_\_\_\_
      - Average distance/week: \_\_\_\_\_
      - Typical Errand:
    - Shop
      - Grocery Shop
        - (\_\_\_\_\_ times per \_\_\_\_\_)
        - with help from \_\_\_\_\_
        - without help
  - Social
    - friends/family
    - Church
    - Clubs
    - Sporting Activities
  - Daily routine
    - care for personal needs
    - sleep
    - appetite
    - naps
    - hobbies/keep mind occupied
- Read:  yes  no  With difficulty (explain):
- Watch TV:  yes (# hrs/day: \_\_\_\_\_)  no

Typical Day

Up: \_\_\_\_\_ a.m. p.m.  
(11:00 a.m. - 12 noon)(3E/2)

- Take RX
- Make my bed
- eat breakfast
- If appointments - go to them
- If no appts - go back to bed or watch TV

Morning

Afternoon

Evening

Bedtime: \_\_\_\_\_ a.m. p.m.

## CLOSING MOTIONS

I. Consultative Examinations: **None**

II. Closing Argument

**12.04 Affective disorders:** Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
- b. Appetite disturbance with change in weight; or
- c. Sleep disturbance; or
- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or
- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions, or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

- a. Hyperactivity; or
- b. Pressure of speech; or
- c. Flight of ideas; or
- d. Inflated self-esteem; or
- e. Decreased need for sleep; or
- f. Easy distractibility; or
- g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
- h. Hallucinations, delusions or paranoid thinking; or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

**12.06 Anxiety-related disorders:** In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
  - a. Motor tension; or
  - b. Autonomic hyperactivity; or
  - c. Apprehensive expectation; or
  - d. Vigilance and scanning; or
2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
4. Recurrent obsessions or compulsions which are a source of marked distress; or
5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

OR

C. Resulting in complete inability to function independently outside the area of one's home.

**GRID RULE:** 201.06 Age at onset: 55 Education: some college  
 Past Work  Unskilled  **Skills Not Transferrable** (why)

Record Open:      days  
 For:

Record Closed - Ready for a Decision

**APPENDIX H**

**SAMPLE PRE-HEARING BRIEF**

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August 26, 2015

Hon. [REDACTED]  
Administrative Law Judge  
801 East Main Street, Fourth Floor  
Richmond, VA 23219

**BY ELECTRONIC  
RECORDS EXPRESS**

RE: [REDACTED]  
SSAN: [REDACTED]

Dear Judge [REDACTED]:

Ms. [REDACTED]'s hearing is set to be held before you on April 22, 2015 at 9:30 a.m. Please allow this to serve as our opening brief in this matter.

**I. CLAIM INFORMATION**

**A) TITLE II (Disability Insurance Benefits, Period of Disability)**

- APPLICATION: December 14, 2012
- AOD: October 31, 2013 (as amended)(6D)
- DLI: December 31, 2016

**B) TITLE XVI (SSI) APPLICATION: None**

**II. CLAIMANT INFORMATION**

- DOB: [REDACTED]
  - Age at AOD: 55 years old
  - Age at DLI: N/A
- EDUCATION: 3 years college (2E/3)
- PAST WORK:

Begin	End	Title	Sit	Stand	Walk	Lift
02/09	08/12	Manpower Analyst (U.S. Army)	4	1	2	10#
02/05	01/09	Sr. Human Resources Mgr (U.S. Army)	3	2	2	10#
08/80	01/05	Human Resources Manager (U.S. Army)	5	1	2	20#

### III. EXECUTIVE SUMMARY

Ms. [REDACTED] is currently 57 years old. Her earnings record is extraordinary - to say the least. She worked continuously from 1976 until 2012, culminating in making more than \$100,000.00 per year as a Manpower Analyst for the United States Army (5D). Her Major Depression with Anxiety and Panic attacks originates with conflicts with a supervisor in 2012 (2F/12) that has mushroomed. As these conflicts continued, her job performance suffered for which she received reprimand (20E). Her treating psychiatrist, Dr. [REDACTED], believes that her ability to undertake various basic mental activities in a work setting is moderately severely compromised in many, crucial areas such as, *inter alia*, completing a normal workweek or maintaining concentration and attention for at least 2 straight hours with at least four such sessions in a workday, getting along with co-workers or responding appropriately to changes in the work environment (9F/4-5).

Ms. [REDACTED] also has physical problems relating to degeneration of her bilateral knee joints. This prevents her from performing work on her feet for substantial periods of time.

The combined effect of Ms. [REDACTED]'s conditions is such that she is unable to perform the mental duties of her past work - all of which was highly complex. She is limited to sedentary or light work and is entitled to benefits under Grid Rules 201.06 or Grid Rule 202.06. Her erstwhile skills are not transferrable due to her mental illness.

### IV. SEQUENTIAL EVALUATION

**A) Substantial Gainful Activity:** There is no indication that Ms. [REDACTED] has engaged in Substantial Gainful Activity since the Amended Alleged Onset Date of October 31, 2013.

**B) Severe Impairments:** Ms. [REDACTED] alleges disability due to Major Depressive Disorder with Anxiety as well as Degenerative Joint Disease of the knees. These are medically determinable impairments based on both laboratory testing and physical examination.

**1) Major Depressive Disorder with Anxiety:** This is characterized by the following clinical findings:

- Sleep disturbance;
  - 12/09/14 (12F/6): ...she still has some issues with sleep; since 10/2014 she has had reduced sleep (only 2-3 hours per night) and as a result she has to take a nap around 1 pm.
  - 09/11/13 (10F/32): Still sleeping too much
  - 07/30/13 (10F/41): Often spends most of the day in bed ruminating or sleeping
- Psychomotor agitation or retardation
  - 12/09/14 (12F/7): Affect - sad, depressed
  - 01/22/14 (10F/10): Mood: depressed, angry
  - 10/10/13 (10F/27): Affect/Mood: Depressed, Anxious
- Decreased energy;
  - 01/22/14 (10F/10): Looks tired
  - 10/28/13 (10F/22): Sleeping too much and energy not back to normal
- Feelings or guilt or worthlessness;
  - 01/22/14 (10F/10): Trying hard to restore her integrity and self-confidence
  - 10/28/13 (10F/22): distorted self blame; guilty about not bringing in income

- Difficulty concentrating or thinking
  - **12/09/14 (12F/7)**: MSE: Attention/concentration: reduced ability to concentrate for prolonged periods of time.
  - **02/06/13 (6F/32)**: Memory loss - can't remember own phone # - pseudodementia 2° Anxiety
- Thoughts of suicide
  - **07/10/13 (10F/49)**: Suicidal thoughts
- Hallucinations, delusions or paranoid thinking
  - **09/11/13 (10F/32)**: She ran out of the grocery store after hearing voices call her name
  - **08/27/13 (10F/38)**: Endorses paranoid ideation

**2) Degenerative joint disease of the knees**: This is characterized by the following clinical findings:

**a) Radiology**

- **01/18/12 (7F/430)** - MRI of both knees was performed. Cartilage defects of both patella and trochlea bilaterally, grade III signal in Right knee MM and Left knee LM
- **12/06/11 (6F/146)** - several areas of pathology probably the most symptomatic of which is the osteochonral defect in the trochlea. Despite PT, ESI and Hyalgan injections, pts. symptoms have not improved
- **01/05/10 (7F/111)** - Greatest degree of joint space narrowing is seen along the lateral patellofemoral joint compartment...consistent with significant grade 2 chondromalacia patella

**b) Physical Exam**

- **05/17/13 (7F/125)** - Left knee crepitus
- **05/07/13 (7F/127)** - Left knee crepitus; positive inhibition sign
- **03/20/13 (7F/144)** - Right knee crepitus; positive inhibition sign
- **03/07/13 (7F/150)** - Right knee crepitus; positive inhibition sign
- **06/21/12 (7F/182)** - decreased knee synovitis and small effusion
- **06/12/12 (7F/189)** - Mild knee synovitis with small effusion
- **05/29/12 (7F/194)** - Mild Left knee synovitis. Left knee ROM 110°
- **05/22/12 (7F/199)** - Mild Left knee synovitis. Left knee ROM 110°
- **05/17/12 (7F/201)** - Mild Left knee synovitis. Left knee ROM 110°
- **04/12/12 (6F/86)** - bilateral knee synovitis and effusion
- **01/18/12 (6F/123)** - positive patellar grind and quad inhibition tests

**C) Listing of Impairments**: I do not believe that Ms. [REDACTED]'s conditions meet the requirements of any Listed Impairment.

**D) Ability to Perform Past Work or Other Work**: Ms. [REDACTED]'s ability to perform her past relevant work or any other work depends on the credibility of her Residual Functional Capacity. The Ruling and Regulations provide that you must assess the credibility of Ms. [REDACTED]'s statements based on the entire case record. Consideration of the entire case record includes any and all factors set forth in 20 C.F.R. §404.1529(c)(3). In this case, please consider the following factors:

(i) *Activities of Daily Living*: These are described in Ms. ██████'s Function Report (3E, 10E) and the Third Party Function Report of her husband (5E) set forth extremely limited activities which are consistent with her inability to sustain independent activity on a reliable, eight-hour-per-day, five-day-per-week basis

- Husband does not want me to use the stove (3E/4);
- She must not be left unattended to cook (5E/4);
- She can wash dishes or do laundry. "It takes a long time" (3E/4) and she has help (10E/4)
- She can tend to personal needs but "it takes much longer" (3E/3);
- She must be reminded to take medications by phone calls from her husband (5E/5);
- She uses her phone alarm to remind her to take medications (10E/4);
- She has difficulty sleeping 90% of the time (5E/4);
- She does not like driving "I am afraid because I have difficulty staying between the lines (3E/5);
- She tries to walk "when I feel good" (3E/6). "Sometime I don't do it at all" (10E/6);
- Husband helps paying bills because she forgets (3E/5, 5E/7);
- Ms. ██████ attends cooking classes (12F/4). But she "struggles with lectures and understanding" (10E/7). She requires additional time for completion of assignments or exams and experiences panic attacks if placed under too much pressure at the school (Statement of ██████, submitted but not marked). Ms. Strayhorn is expected to provide further testimony as to the extent of these problems.

(ii) *Type, dosage, effectiveness and side effects of any medication*: See, 15E (list of current medications) and 16E (pharmacy histories) as to the various medications and dosages which have been tried by her doctors. These are entirely consistent with her description of her problems and limitations.

(iii) *Treatment other than medications*. Ms. ██████ has undergone different injections into the knees as follows:

- 05/17/13 (7F/125): LEFT knee
- 05/07/13 (7F/128): LEFT knee
- 05/02/13 (7F/131): LEFT knee
- 03/20/13 (7F/144): RIGHT knee
- 03/07/13 (7F/149): LEFT knee
- 06/21/12 (6F/56): RIGHT Knee
- 06/12/12 (6F/63): RIGHT Knee
- 06/05/12 (6F/66): RIGHT Knee
- 05/29/12 (6F/68): LEFT Knee
- 05/22/12 (6F/72): LEFT Knee
- 05/17/12 (6F/75): LEFT Knee

## V. TREATING PHYSICIAN OPINIONS

Immediately prior to Ms. ██████'s Amended Alleged Onset Date, Dr. ██████ provided a statement as to her ability to undertake various Basic Mental Work Activities (9F). As per Social Security Ruling 96-2p, in order for this opinion to be accorded controlling weight, the opinion must meet four tests:

- Treating source: ██████ is a treating source as that term is defined in 20 C.F.R. §404.1527(d)(2);
- Medical opinion: ██████ opinion is an opinion about the nature and severity of Ms. Strayhorn's impairments in accordance with 20 C.F.R. §404.1527(a);

- Well supported by medically acceptable clinical and laboratory diagnostic techniques: “For a medical opinion to be well-supported by medically acceptable clinical and laboratory diagnostic techniques, it is not necessary that the opinion be fully supported by such evidence”. Social Security Ruling 96-2p. Here, as set forth, above, [REDACTED] conclusions are “well supported” by clinical findings.

- Not inconsistent: “...a well-supported treating source medical opinion need not be supported directly by all of the other evidence (i.g., it does not have to be consistent with all the other evidence) as long as there is no other substantial evidence in the record that contradicts or conflicts with the opinion”. Social Security Ruling 96-2p. Here, the only possible evidence which would otherwise be remotely considered as inconsistent would be the opinion of the non-examining State Agency physician. However, the opinion of a non-examining physician, alone, does not constitute “substantial” evidence which is inconsistent with the opinion of an examining and treating physician. Gordon v. Schweiker, 725 F.2d 231, 235 (4<sup>th</sup> Cir. 1984) *citing* Martin v. Secretary, 492 F.2d 905 (4th Cir. 1974); accord Hall v. Harris, 658 F.2d 260, 266 (4th Cir. 1981).

## VI. CONCLUSION

For the above-stated reasons, we would respectfully request that you grant Ms. [REDACTED] application. I look forward to appearing before you on behalf of Ms. [REDACTED]. In the meantime, should you have any questions about this matter, please do not hesitate to call me.

s/**Bruce K. Billman**  
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