



SOCIAL SECURITY ADMINISTRATION

Refer To: 261-90-6357

Office of Hearings and Appeals
San Antonio Hearing Office, SSA
Trinity Building, Suite 100
4204 Woodcock Drive
San Antonio, TX 78228-1323

Date:

APR 20 2006

Christopher A. Walters
C/O 110 N. McCullough
San Antonio, TX 78205

NOTICE OF DECISION – PARTIALLY FAVORABLE

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

This Decision is Partially Favorable To You

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

If You Disagree With The Decision

If you disagree with my decision, you may file an appeal with the Appeals Council.

How to File an Appeal

To file an appeal you or your representative must request that the Appeals Council review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the **Appeals Council, Office of Hearings and Appeals, 5107 Leesburg Pike, Falls Church, VA 22041-3255**. Please put the Social Security number shown above on any appeal you file.

Time to File an Appeal

To file an appeal, you must file your request for review **within 60 days** from the date you get this notice.

See Next Page

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Time to Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider **with** your request for review.

How an Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The Council may review your case for any reason. It **will** review your case if one of the reasons for review listed in our regulation exists. Section 404.970 and Section 416.1470 of the regulation list these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

If No Appeal and No Appeals Council Review

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

Your Right To Representation In An Appeal

You may have a lawyer or other person help you in any appeal you file with the Appeals Council. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with an appeal.

If you get someone to help you with an appeal, you or that person should let the Appeals Council know. If you hire someone, we must approve the fee before he can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past-due insurance benefits to pay towards the fee.

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (210)472-4400. Its address is Social Security, 727 East Durango Blvd, Rm 701 7th Floor, San Antonio, TX 78206-9983.

A handwritten signature in black ink, appearing to read 'W.S. Herbert', with a long horizontal stroke extending to the right.

William S. Herbert
Administrative Law Judge

DECISION

CLAIM FOR

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

261-90-6357
(Social Security Number)

On January 9, 2004, the claimant protectively filed applications for a period of disability, Disability Insurance Benefits and Supplemental Security Income payments. Both claims were denied initially and on reconsideration, and a request for hearing was timely filed on June 21, 2004.

The claimant previously protectively filed an application for Supplemental Security Income on June 18, 1997. This application was denied initially and on reconsideration, and a request for hearing was timely filed on September 14, 1998. The claimant received an Administrative Law Judge's decision dated July 23, 1999, and the claimant requested review of that decision by the Appeals Council on July 27, 1999. In an Action of the Appeals Council on Request for Review letter dated July 18, 2001, the Appeals Council denied the claimant's request for review and the claimant did not file an appeal. The Administrative Law Judge's decision dated July 23, 1999 became the final decision of the Commissioner when the claimant did not file an appeal.

By alleging an onset of disability commencing within a previously adjudicated period, the claimant has, by implication, requested reopening and revision of the Administrative Law Judge's decision dated July 23, 1999. To reopen that decision, the claimant must establish that "good cause" for reopening exists pursuant to 20 CFR 404.987 - 404.989 and 20 CFR 416.1487-416.1489. With his current application for benefits, the claimant has submitted a number of medical reports; however, all of the medical reports dated prior to the Administrative Law Judge's decision of July 23, 1999 are duplicates that were considered in the prior Administrative Law Judge's decision. There being no "new and material" evidence to establish the requisite "good cause," the undersigned finds that the July 23, 1999 decision cannot be reopened. Thus, the issue of disability is *res judicata* through July 23, 1999, and this decision will consider only the claimant's entitlement to benefits since July 24, 1999. Any discussion of the medical or other evidence prior to that date is for the limited purpose of determining the effects of the claimant's chronic health problems on his current level of functioning, and is not intended to

reopen the final decision of the Commissioner denying the application protectively filed June 18, 1997.

The claimant received an Administrative Law Judge's dismissal dated July 7, 2005 because the claimant requested that his request for hearing be withdrawn. The claimant requested review of the dismissal by the Appeals Council on July 20, 2005. In an Order dated December 14, 2005, the Appeals Council vacated the previous dismissal, and found that the claimant did not fully understand the effects of such an action and remanded the case for further proceedings. A hearing was subsequently held on March 29, 2006 in San Antonio, Texas. Susan Pelzer, Ph.D., a clinical psychologist, appeared and testified in the capacity of impartial medical expert. Judith Harper, a vocational expert, appeared but did not testify. The claimant did not appear for the scheduled hearing, and the Administrative Law Judge finds that the claimant was considered a non-essential witness, and proceeded with the scheduled hearing.

ISSUES

The general issue is whether the claimant is entitled to a period of disability and Disability Insurance Benefits under sections 216(i) and 223 of the Social Security Act, and whether he is disabled under section 1614(a)(3)(A) of the Social Security Act. The specific issue is whether he is under a disability, which is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

With respect to the claim for Disability Insurance Benefits, there is an additional issue pertaining to insured status. A review of the claimant's earnings record reveals that he has earned sufficient quarters of coverage to remain insured only through March 31, 1990. Thus, in order to become eligible for Disability Insurance Benefits, the claimant must demonstrate that he was under a disability on or before that date. Furthermore, since the Administrative Law Judge finds that the issue of disability has been adjudicated by the Administrative Law Judge's decision through July 23, 1999, which is well past the expiration of the claimant's insurance status, the claimant's application for a period of disability and Disability Insurance Benefits is denied due to the expiration of his insured status and under the issue of *res judicata*. Thus, the issue of disability is *res judicata* through July 23, 1999, and this decision will consider only the claimant's entitlement to benefits for Supplemental Security Income since July 24, 1999.

Since Supplemental Security Income payments are available only from the application date, evaluation in this case will be of the evidence from January 9, 2004 to the present.

EVALUATION OF THE EVIDENCE

The claimant is a 55-year-old individual with a 12th grade education, and has no past relevant work.

The Social Security Administration follows a five-step process in determining disability.

(20 CFR 416.920(b)-(f)). At the first step of this process, the Administrative Law Judge finds that the claimant has not engaged in substantial gainful activity at any time since the claimant filed his current application for Supplemental Security Income on January 9, 2004.

The second step of the sequential evaluation process requires that a determination be made whether the claimant has an impairment or a combination of impairments that is severe within the meaning of the regulations.

At the hearing, Susan Pelzer, Ph.D., an impartial medical expert testified that in her opinion the claimant's impairments meet section 12.08, a personality disorder, in the listings. Dr. Pelzer testified further that the claimant had the necessary documentation to support findings under section 12.08 of inflexible and maladaptive personality traits, which causes either significant impairment in social or occupational functioning or subjective distress, with evidence of aggressivity and intense and unstable interpersonal relationships with impulsive and damaging behavior. The medical expert further testified that the claimant: (1) exhibited no restrictions of daily activities as he is able to move frequently to get indigent care, set up WEB sites and prepare elaborate paperwork; (2) has an extreme limitation in his difficulties in maintaining social functioning as he is very sarcastic about issues, e.g., he applies for disability and then withdraws his request because others are incompetent (doctors and lawyers), and he is delusional at times expressing extreme aggressivity with intense and unstable interpersonal relationships; (3) has no restriction in his difficulties in maintaining concentration, persistence, or pace, because, as stated previously, the claimant is capable of elaborate paperwork and computer capabilities; and (4) further that the claimant has decompensated, but he does not stay in an area long enough to get treatment. Dr. Pelzer testified further that in her opinion the claimant meets the qualifications for a disabled individual under section 12.08 in the extreme level of socialization as he threatened people in their offices, to include Judges and office workers, for many years. Dr. Pelzer also noted that the claimant has had problems with his bowels, but exaggerated this to the point no doctor could possibly fix anything.

The Administrative Law Judge finds that the claimant has medically determinable severe impairment of a personality disorder and chronic infections of the colon. The claimant has no other "severe" impairments within the meaning of the regulations. Stone v. Heckler, 752 F. 2d 1099 (5th Cir. 1985).

After giving careful consideration to all the documentary evidence, the Administrative Law Judge concurs with the medical expert's testimony and has concluded that the claimant has an impairment that meets the criteria of section 12.08 A and B of the impairments listed in Appendix 1, Subpart P of the regulations (20 CFR, Part 404). In reaching this conclusion, the Administrative Law Judge has accorded substantial weight to the claimant's treating physicians, as well as the credible testimony of the medical expert (SSR 96-2p and SSR 96-5p).

The Administrative Law Judge also considered the opinions of the State Agency medical consultants in accordance with SSR 96-6p. However, in light of the more recent evidence of record, which was unavailable to the State Agency medical consultants at the time of their review, (such as the testimony of the medical expert and record as a whole), the Administrative

Law Judge has concluded that the claimant's impairments are much more limiting than was previously determined.

However, the claimant met the nondisability requirements for a period of disability and Disability Insurance Benefits set forth in Section 216(I) of the Social Security Act and was insured for benefits only through March 31, 1990 and the issue of disability had been previously adjudicated through July 23, 1999. Therefore, for any time period commencing prior to January 9, 2004, the claimant was not entitled to a period of disability and Disability Insurance Benefits set forth in Section 216(I) of the Social Security Act due to the expiration of his insured status and the issue of *res judicata* as previously discussed.

Furthermore, in accordance with a finding that the claimant has been under a disability beginning January 9, he is eligible for Supplemental Security Income payments by virtue of his application of January 9, 2004.

FINDINGS

After careful consideration of the entire record, the Administrative Law Judge makes the following findings:

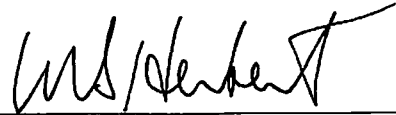
1. The claimant met the insured status requirements of the Social Security Act through March 31, 1990, but not at any date thereafter.
2. The claimant has not engaged in substantial gainful activity since he applied for benefits on January 9, 2004.
3. The medical evidence establishes that the claimant has severe impairments of a personality disorder and chronic infections of the colon.
4. The severity of the claimant's personality disorder impairment meets the requirements of section 12.08 A and B, Appendix 1, Subpart P. Regulations No. 4 and is expected to preclude him from working for at least 12 continuous months.
5. The claimant has been under a disability, as defined in the Social Security Act, since January 9, 2004, but not prior thereto (20 CFR §§404.1520(d) and 416.920(d)).

DECISION

It is the decision of the Administrative Law Judge that, based on the application protectively filed on January 9, 2004, the claimant is "not" entitled to a period of disability and to Disability Insurance Benefits under sections 216(i) and 223, respectively, of the Social Security Act.

It is the further decision of the Administrative Law Judge that, based on the application protectively filed on January 9, 2004, the claimant was disabled under section 1614(a)(3)(A) of the Social Security Act, beginning January 9, 2004, and that the claimant's disability has continued at least through the date of this decision.

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



William S. Herbert
Administrative Law Judge

APR 20 2006

Date

APR 20 2006