

## Documents Related to Administrative Process Including Transcript of Oral Hearing, if applicable

Civil Action Number: 1:10-CV-12345

Claimant: Lucky Phylla

Account Number: 987-65-4321

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DATE: May 11, 2010

The documents and exhibits contained in this administrative record are the best copies obtainable.



Refer to: TLC

Office of Disability Adjudication  
and Review  
5107 Leesburg Pike  
Falls Church, VA 22041-3255  
Telephone: (703) 605-8000  
Date: **JAN 20 2010**

## NOTICE OF APPEALS COUNCIL ACTION

This is about your request for review of the Administrative Law Judge's decision dated July 31, 2009.

### **We Have Denied Your Request for Review**

We found no reason under our rules to review the Administrative Law Judge's decision. Therefore, we have denied your request for review.

This means that the Administrative Law Judge's decision is the final decision of the Commissioner of Social Security in your case.

### **Rules We Applied**

We applied the laws, regulations and rulings in effect as of the date we took this action.

Under our rules, we will review your case for any of the following reasons:

- The Administrative Law Judge appears to have abused his or her discretion.
- There is an error of law.
- The decision is not supported by substantial evidence.
- There is a broad policy or procedural issue that may affect the public interest.
- We receive new and material evidence and the decision is contrary to the weight of all the evidence now in the record.

### **What We Considered**

In looking at your case, we considered the reasons you disagree with the decision and the additional evidence listed on the enclosed Order of Appeals Council. The Appeals Council has also considered the additional evidence submitted, but concluded that this additional

evidence does not provide a basis for changing the Administrative Law Judge's decision.

### **If You Disagree With Our Action**

If you disagree with our action, you may ask for court review of the Administrative Law Judge's decision by filing a civil action.

If you do not ask for court review, the Administrative Law Judge's decision will be a final decision that can be changed only under special rules.

### **How to File a Civil Action**

You may file a civil action (ask for court review) by filing a complaint in the United States District Court for the judicial district in which you live. The complaint should name the Commissioner of Social Security as the defendant and should include the Social Security number(s) shown at the top of this letter.

You or your representative must deliver copies of your complaint and of the summons issued by the court to the U.S. Attorney for the judicial district where you file your complaint, as provided in rule 4(i) of the Federal Rules of Civil Procedure.

You or your representative must also send copies of the complaint and summons, by certified or registered mail, to the Social Security Administration's Office of the General Counsel that is responsible for the processing and handling of litigation in the particular judicial district in which the complaint is filed. The names, addresses, and jurisdictional responsibilities of these offices are published in the Federal Register (70 FR 73320, December 9, 2005), and are available on-line at the Social Security Administration's Internet site, <http://policy.ssa.gov/poms.nsf/links/0203106020>.

You or your representative must also send copies of the complaint and summons, by certified or registered mail, to the Attorney General of the United States, Washington, DC 20530.

### **Time To File a Civil Action**

- You have 60 days to file a civil action (ask for court review).
- The 60 days start the day after you receive this letter. We assume you received this letter 5 days after the date on it unless you show us that you did not receive it within the 5-day period.
- If you cannot file for court review within 60 days, you may ask the Appeals Council to extend your time to file. You must have a good reason for waiting more than 60 days to ask for court review. You must make the request in writing and give your reason(s) in the request.

You must mail your request for more time to the Appeals Council at the address shown at the

top of this notice. Please put the Social Security number(s) also shown at the top of this notice on your request. We will send you a letter telling you whether your request for more time has been granted.

**About The Law**

The right to court review for claims under Title II (Social Security) is provided for in Section 205(g) of the Social Security Act. This section is also Section 405(g) of Title 42 of the United States Code.

The right to court review for claims under Title XVI (Supplemental Security Income) is provided for in Section 1631(c)(3) of the Social Security Act. This section is also Section 1383(c) of Title 42 of the United States Code.

The rules on filing civil actions are Rules 4(c) and (i) in the Federal Rules of Civil Procedure.

**If You Have Any Questions**

If you have any questions, you may call, write, or visit any Social Security office. If you do call or visit an office, please have this notice with you. The telephone number of the local office that serves your area is (501)525-6927. Its address is:

Social Security  
112 Corporate Terrace  
Hot Springs, AR 71913-7247

ORIGINAL SIGNED BY

Enclosure: Order of Appeals Council

cc:

Social Security Administration  
OFFICE OF DISABILITY ADJUDICATION AND REVIEW

**ORDER OF APPEALS COUNCIL**

**IN THE CASE OF**

**CLAIM FOR**

\_\_\_\_\_  
(Claimant)

\_\_\_\_\_  
Supplemental Security Income

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

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

The Appeals Council has received additional evidence which it is making part of the record. That evidence consists of the following exhibits:

Exhibit AC-1      10F-Medical records from Geneva General  
Hospital

Date: **JAN 20 2010**

**REQUEST FOR REVIEW OF HEARING DECISION/ORDER**

(Do not use this form for objecting to a recommended ALJ decision.)

(Take or mail the signed original to your local Social Security office, the Veterans Affairs Regional Office in Manila or any U.S. Foreign Service post and keep a copy for your records)

See Privacy Act Notice

1. CLAIMANT	2. WAGE EARNER, IF DIFFERENT
3. SOCIAL SECURITY CLAIM NUMBER	4. SPOUSE'S NAME AND SOCIAL SECURITY NUMBER (Complete ONLY in Supplemental Security Income Case)

5. I request that the Appeals Council review the Administrative Law Judge's action on the above claim because:  
The decision of the ALJ is not supported by substantial evidence of record. Due to my medical and mental health conditions I am unable to perform any substantial gainful activity.

**ADDITIONAL EVIDENCE**

If you have additional evidence submit it with this request for review. If you need additional time to submit evidence or legal argument, you must request an extension of time in writing now. If you request an extension of time, you should explain the reason(s) you are unable to submit the evidence or legal argument now. If you neither submit evidence or legal argument now nor within any extension of time the Appeals Council grants, the Appeals Council will take its action based on the evidence of record.

**IMPORTANT: Write your Social Security Claim Number on any letter or material you send us.**

**SIGNATURE BLOCKS:** You should complete No. 6 and your representative (if any) should complete No. 7. If you are represented and your representative is not available to complete this form, you should also print his or her name, address, etc. in No. 7.

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying statements or forms, and it is true and correct to the best of my knowledge.

6. CLAIMANT'S SIGNATURE	DATE	7. REPRESENTATIVE'S SIGNATURE	<input checked="" type="checkbox"/> ATTORNEY <input type="checkbox"/> NON-ATTORNEY
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TEL ( )

02

<b>THE SOCIAL SECURITY ADMINISTRATION STAFF WILL COMPLETE THIS PART</b>	
8. Request received for the Social Security Administration on _____ by: _____ (Date) (Print Name)	
_____ (Title)	_____ (Address)
_____ (Servicing FO Code)	_____ (PC Code)
9. Is the request for review received within 65 days of the ALJ's Decision/Dismissal? <input type="checkbox"/> Yes <input type="checkbox"/> No	
10. If "No" checked: (1) attach claimant's explanation for delay; and (2) attach copy of appointment notice, letter or other pertinent material or information in the Social Security Office.	
11. Check one: <input type="checkbox"/> Initial Entitlement <input type="checkbox"/> Termination or other	12. Check all claim types that apply: <input type="checkbox"/> Retirement or survivors (RSI) <input type="checkbox"/> Disability-Worker (DIWE) <input type="checkbox"/> Disability-Widow(er) (DIWW) <input type="checkbox"/> Disability-Child (DIWC) <input type="checkbox"/> SSI Aged (SSIA) <input type="checkbox"/> SSI Blind (SSIB) <input type="checkbox"/> SSI Disability (SSID) <input type="checkbox"/> Health Insurance-Part A (HIA) <input type="checkbox"/> Health Insurance-Part B (HIB) <input type="checkbox"/> Title VIII Only (SVB) <input type="checkbox"/> Title VIII/Title XVI (SVB/SSI) <input type="checkbox"/> Other - Specify: _____
APPEALS COUNCIL OFFICE OF HEARINGS AND APPEALS, SSA 5107 Leesburg Pike FALLS CHURCH, VA 22041 - 3255	

September 3, 2009

Social Security Administration  
112 Corporate Terrace  
Hot Springs, AR 71913

Re: [REDACTED]

SSN: [REDACTED]

Dear Sir/Madam:

Enclosed you will find the Request for Review of Hearing Decision/Order to appeal [REDACTED] denial of SSI benefits at the hearing level. Also enclosed are copies of [REDACTED] records from the Geneva General Hospital in Geneva, New York. These records are from November 1986, showing the skull fracture he received when he was dropped as an infant and from June 1991 showing the injuries he sustained when he, apparently, jumped out of a moving vehicle as a four and a half year old child. Please make these a part of [REDACTED] disability claim file. They were not available to be submitted prior to the hearing because the hospital in New York had not yet located the records.

If I need to do anything further or if you have questions or comments, please let me know.

Very truly yours,

Enc:

pc: Appeals Council  
Office of Hearings and Appeals, SSA  
5107 Leesburg Pike  
Falls Church, VA 22041-3255



**SOCIAL SECURITY ADMINISTRATION**

Refer To: [REDACTED]

Office of Disability Adjudication and Review  
SSA ODAR Hearing Ofc  
Rm 2405 Federal Bldg  
700 West Capitol Ave  
Little Rock, AR 72201-3227

Date: July 31, 2009

**NOTICE OF DECISION – UNFAVORABLE**

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

**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 Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22041-3255**. Please put the Social Security number shown above on any appeal you file.

**Time to File an Appeal**

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

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

**Time to Submit New Evidence**

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

See Next Page

### **How an Appeal Works**

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

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

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

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

### **The Appeals Council May Review The Decision On Its Own**

The Appeals Council can review my decision even without your request to do so. If it decides to do that, the Council will mail you a notice about its review within 60 days from the date of this notice.

### **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.

### **New Application**

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with my decision and you file a new application instead of appealing, you might lose some benefits, or not qualify for any benefits. My decision could also be used to deny a new application for insurance benefits, if the facts and issues are the same. So, if you disagree with this decision, you should file an appeal within 60 days.

**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 (501)525-6927. Its address is Social Security, 112 Corporate Terrace, Hot Springs, AR 71913-7247.

Enclosures:  
Decision Rationale

cc:

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

**DECISION**

**IN THE CASE OF**

**CLAIM FOR**

\_\_\_\_\_  
(Claimant)

\_\_\_\_\_  
Supplemental Security Income

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

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

**JURISDICTION AND PROCEDURAL HISTORY**

On October 5, 2007, the claimant filed an application for supplemental security income, alleging disability beginning December 28, 1999. The claim was denied initially on December 20, 2007, and upon reconsideration on February 8, 2008. Thereafter, the claimant filed a written request for hearing on April 25, 2008 (20 CFR 416.1429 *et seq.*). The claimant appeared and testified at a hearing held on May 27, 2009, in Hot Springs, Arkansas. Also appearing and testifying were Dianne G. Smith, an impartial vocational expert, and \_\_\_\_\_, the claimant's step-father. The claimant is represented by \_\_\_\_\_, an attorney.

**ISSUES**

The issue is whether the claimant is disabled under section 1614(a)(3)(A) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

Although supplemental security income is not payable prior to the month following the month in which the application was filed (20 CFR 416.335), the undersigned has considered the complete medical history consistent with 20 CFR 416.912(d).

After careful consideration of all the evidence, the undersigned concludes the claimant has not been under a disability within the meaning of the Social Security Act since October 5, 2007, the date the application was filed.

**APPLICABLE LAW**

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 416.920(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has demonstrated the ability to engage in SGA (20 CFR 416.974 and 416.975). If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 416.920(e)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 416.920(e) and 416.945; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 416.960(b) and 416.965). If the claimant has the residual functional capacity to do his past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 416.920(g)), the undersigned must determine whether the claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he is not disabled. If the claimant is not able to do other work and meets the duration requirement, he is disabled. Although the claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 416.912(g) and 416.960(c)).

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After careful consideration of the entire record, the undersigned makes the following findings:

- 1. The claimant has not engaged in substantial gainful activity since October 5, 2007, the application date (20 CFR 416.971 *et seq.*).**
- 2. The claimant has the following severe impairments: idiopathic scoliosis of the spine status post posterior spinal fusion surgery from T4 to L4; reading disorder; mathematics disorder; borderline range of intelligence; and adjustment disorder with mixed emotional features (20 CFR 416.920(c)).**

After careful consideration of the evidence, the Administrative Law Judge finds that the claimant's combination of medically determinable impairments as delineated above would impose more than a slight abnormality and have more than a minimal effect on the claimant's ability to do basic physical and/or mental work activities and would thus be "severe" within the meaning of the regulations.

- 3. The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.925 and 416.926).**

After a thorough review of the evidence, the Administrative Law Judge finds no evidence to show the existence of any physical impairment(s) that meets the criteria of 1.04 or any other of the listed impairments described in Appendix 1 of the Regulations (20 CFR, Part 404, Subpart P, Appendix 1, Regulation No. 4). Further, no treating or examining physician has mentioned findings equivalent in severity to the criteria of any listed physical impairment. In reaching this conclusion, the Administrative Law Judge has also considered the opinions of the State agency medical consultants who evaluated this issue at the initial and reconsideration levels of the administrative process and reached the same conclusion, (20 CFR 404.1512 and 416.812; SSA 96-6P).

The claimant's mental impairments do not meet or medically equal the requirements of any of the listed impairments described in Appendix 1 of the Regulations (20 CFR, Part 404, Subpart P, Appendix 1, Regulation No. 4). The medical evidence establishes that the claimant has exhibited some of the features of the "A" criteria of listing 12.05. However, a review of the relevant "D" criteria of listing 12.05 indicates that none of the functional limitation categories are manifested at a degree which satisfied the full requirements of such a listing.

In addition, the "B" criteria of listing 12.05 are not met because the claimant does not have a valid verbal, performance, or full scale IQ of 59 or less. When the claimant was tested with the Wechsler Adult Intelligence Test-III in December, 2007, the claimant's Verbal IQ was listed at 71, his Performance IQ at 85 and his Full Scale IQ at 76.

The "paragraph C" criteria of listing 12.05 are not met because the claimant does not have a valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function.

Finally, to satisfy the "D" criteria of listing 12.05, the mental impairments must result in at least two of the following: marked restriction of activities of daily living; marked difficulties in maintaining social functioning; marked difficulties in maintaining concentration, persistence, or pace; or repeated episodes of decompensation, each of extended duration. A marked limitation means more than moderate but less than extreme. Repeated episodes of decompensation, each of extended duration, means three episodes within 1 year, or an average of once every 4 months, each lasting for at least 2 weeks.

The claimant has reported that he helped out around the house doing dishes and laundry; he was able to cook, drive and go shopping by himself; and he had friends he spent time with. However, the claimant had limitations due to his reading and mathematics disorder and the claimant had been found to function in the borderline range of intelligence. Accordingly, the Administrative Law Judge finds that the claimant has no more than "mild" limitations in activities of daily living and "social functioning" and moderate limitations in "concentration, persistence and pace". There is no evidence of deterioration or decompensation in work or work-like settings.

The limitations identified in the "paragraph D" criteria of listing 12.05 criteria are not a residual functional capacity assessment but are used to rate the severity of mental impairments at steps 2 and 3 of the sequential evaluation process. The mental residual functional capacity assessment used at steps 4 and 5 of the sequential evaluation process requires a more detailed assessment by itemizing various functions contained in the broad categories found in paragraph B of the adult mental disorders listings in 12.00 of the Listing of Impairments (SSR 96-8p). Therefore, the following residual functional capacity assessment reflects the degree of limitation the undersigned has found in the "paragraph D" mental function analysis.

**4. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform light work as defined in 20 CFR 416.967(b). The claimant can occasionally lift 20 pounds and 10 pounds frequently; sit about 6 hours per 8 hour workday; and stand/walk for 6 hours per 8 hour workday. The claimant would be limited to unskilled work, in that interpersonal contact incidental to**

**work performed; tasks must be learned by rote; requiring limited judgment; little supervision for routine matters; and detailed supervision for non-routine matters. In addition, the claimant's learning disorder suggested that formal classroom training would not be a good training method; rather on the job training would be better. In addition, the claimant would perform better on work performed slowly and correctly rather than quickly.**

In making this finding, the undersigned has considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 416.929 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 416.927 and SSRs 96-2p, 96-5p, 96-6p and 06-3p.

In assessing the claimant's medically determinable impairments and their impact on the claimant's ability to perform work functions, the Administrative Law Judge also considered the claimant's subjective allegations, giving careful consideration to all avenues presented that relate to such matters as:

1. The nature, location, onset, duration, frequency, radiation and intensity of any pain;
2. precipitating and aggravating factors (e.g., movement, activity, environmental conditions);
3. type, dosage, effectiveness and adverse side-effects of any pain medications;
4. treatment, other than medication, for relief of pain;
5. functional restrictions; and
6. the claimant's daily activities.

(20 CFR 404.1529 and 416.929). Consideration was also given to all the evidence presented related to the claimant's prior work history and the observations of non-medical third parties, as well as treating and examining physicians related to the above matters. Polaski v. Heckler, 739 F.2d 1320, 1322, 751 F.2d 943, 948 (8<sup>th</sup> Cir. 1984).

In considering the claimant's symptoms, the undersigned must follow a two-step process in which it must first be determined whether there is an underlying medically determinable physical or mental impairment(s)--i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques--that could reasonably be expected to produce the claimant's pain or other symptoms.

Second, once an underlying physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms has been shown, the undersigned must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, the undersigned must make a finding on the credibility of the statements based on a consideration of the entire case record.

At the hearing in this matter, the claimant alleged disabling symptoms and/or limitations related to scoliosis and residual back pain, learning disabilities, and headaches.

The claimant testified that he graduated from Lake Hamilton High School in 2006. He indicated that he received special education services for most of his classes while in high school. The last two years of high school, he was in high school for half the day and then spent the rest of the time at the Hot Springs Rehabilitation Center. He received training in food service and he was able to complete the program. He worked at a local hospital cafeteria through an internship while in the rehabilitation center; however, he did not get hired at the hospital. The claimant was told by the hospital staff that he was not fast enough. He has attempted to get jobs at several other businesses around town without success. He further indicated that on occasion he had difficulty completing job applications and would have to take them home for assistance.

The claimant indicated that he had trouble understanding what other people were asking him to do and he had trouble asking questions to seek help. He has also suffered from scoliosis and underwent surgery in 2001. His back continued to cause him pain, he had a hard time bending over, and standing up for more than 30 to 60 minutes would cause his back to hurt. While working in the food service program, he had pain in his back due to the standing and would have to go and lie down to help relieve the pain. Due to his back pain, he was also limited in how much he could lift.

The claimant also testified that he suffered from headaches on a weekly basis. Working too fast, hot conditions and prolonged standing aggravated the headaches. Sometimes he had to lie down to get rid of a headache, but other times over the counter medication would relieve the pain. Also, turning his head from side to side hurts his back and neck, especially when he was driving.

In regards to his activities of daily living, the claimant testified that he was currently living with her mother and step-father. He did not have a check account or a bank account, but he was able to make change and go to the store. He also has a driver's license with no restrictions. In a Function Report – Adult that the claimant completed in October, 2007, the claimant indicated that he took care of a dog and cat, was able to prepare simple meals, was able to do laundry, wash dishes and other house hold cleaning, able to drive a car and ride a bike, able to shop in a store, spent time watching television and playing video games, and spent time with friends. The claimant indicated that he had difficulty getting his shoes on, had no experience with money and was forgetful with spoken instructions. He believed that he could walk for about 20 minutes before needing to rest, could pay attention for 20 minutes, and was able to finish what he started. He also indicated that he was pretty good at following written instructions and got along well with authority figures (Ex. 4E).

As required by the Regulations (20 CFR 404.1513(e)(2) and 416.913(e)(2)) and Polaski v. Heckler, the Administrative Law Judge has also considered the observations of non-medical sources and third parties in relation to how the claimant's impairments affect his ability to work. In that regard, the testimony of \_\_\_\_\_, the claimant's step father, has been carefully considered. Notably, the testimony of this witness, who was in the hearing room for claimant's testimony, for the most part, appeared to merely corroborate the testimony of the claimant regarding the severity and nature of his symptoms.

testified that he has known the claimant since he was about 9 months old. From his observations, the claimant had difficulty with his communication skills and understanding other people and he was unable to bend over due to the rod in his back. The claimant had a few friends that he would socialize with, but spent most of his time watching television and playing video games. The claimant had assisted him in the past doing yard work for other people. The claimant did a good job with tasks, but it took a lot out of him and would take him longer than normal to complete the job. The claimant got easily overwhelmed and worried a lot about things.

When considered in conjunction with other substantial evidence as outlined in this decision, it is the conclusion of the Administrative Law Judge that the testimony of this witness appeared to be based on uncritical acceptance of the claimant's complaints and/or a potential desire to see the claimant receive benefits. Specifically, the testimony of this witness is found to be inconsistent with other substantial evidence in this claim, including the objective medical evidence and is therefore not persuasive.

It must be noted that proof of a disabling impairment must be supported by at least some medical evidence. However, the evidence of record in this claim does not support the allegations of the claimant regarding the nature, severity and duration of his medically determinable impairments. It must be noted that while the claimant's statements regarding the nature and severity of his impairment(s) and its limiting effects is evidence that must be considered, a symptom is not objective medical evidence and is not a medically determinable impairment. No symptom by itself can establish the existence of such impairment or be the basis of a finding of disability (SSR 96-4p and 96-7p).

It is also fully acknowledged by the Administrative Law Judge that the claimant may well experience some degree of discomfort and/or impairment as a result of his medically determinable impairments. Further, while the claimant's allegations regarding the nature and severity of his condition(s) cannot be disregarded solely on the basis of an inconsistency or absence of medical evidence, such factors may be used to contradict the claimant's subjective complaints regarding the nature, severity and overall duration of his symptoms.

After careful consideration of the evidence, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not credible to the extent they are inconsistent with the above residual functional capacity assessment for the reasons explained below.

In terms of the claimant's alleged disabling impairments, the undersigned Administrative Law Judge has very thoroughly considered the objective medical evidence. The record shows that the claimant underwent posterior spinal fusion surgery from T4 to L4 in January, 2001 at Arkansas Children's Hospital due to a diagnosis of idiopathic scoliosis of the spine. At a follow up in March, 2001, Dr. noted that the claimant's incision was well healed and even though he did have some shoulder height discrepancy, he was able to correct it passively when he tried. The claimant reported being able to ride his bike, but did complain of some numbness

around the incision and some pain in the left shoulder when lifting weights. An X-ray of his spine revealed scoliosis rods that extended from the upper dorsal spine to the mid and low lumbar spine but no acute abnormality. Dr. [REDACTED] noted that the claimant's scoliosis was much improved and his spinal fusion was stable (Ex. 1F).

The claimant underwent a psychological screening evaluation for the Arkansas Rehabilitation Services in November, 2004. The claimant reported being in resource classes since 5<sup>th</sup> grade, had no work experience, and was interested in learning how to cook. [REDACTED] the psychological examiner, noted that learning disorder symptoms, especially very slow processing, interfered with the claimant's test taking ability. He believed that the claimant had somewhat more ability than he was able to demonstrate. According to the test results, the claimant was barely literate, had very poor spelling ability, had borderline numerical ability, had close to average abstract reasoning ability, low average verbal receptive intelligence and borderline nonverbal intellectual functions. Based on a school history of recourse classes and the test results, he diagnosed the claimant with a reading disorder and a mathematics disorder. He indicated that the learning disorders had resulted in numerous areas of functional impairment, especially for any academic, training or vocational task requiring anywhere close to average reading and mathematics ability. However, [REDACTED] believed that the claimant had potential for rehabilitation, he would probably do best in some type of on the job training, he appeared to have enough cognitive ability to learn by being shown and told how to do something, and he would do better on work that did not require quick processing and a high rate of production (Ex. 3F).

The claimant was then enrolled in the Hot Springs Rehabilitation Center in January, 2005 in the cafeteria training program. A work evaluation – medical completed on January 24, 2005, indicated that the claimant would have problems lifting up to 85 pounds, pushing, pulling, stooping, twisting, bending, crawling, climbing and with his vision. However, he would not have a problem with reaching, use of hands and arms, fine and gross coordination, standing for 8 hours, walking, hearing, and speech. The restrictions were based on the claimant's past scoliosis with surgical correction, limited bending of the back, moderate myopia and tension headaches. He was to avoid strenuous labor and/or exercise. The claimant was discharged in June, 2006 as a volitional drop out (Ex. 3F).

X-rays of the claimant's lumbar spine and cervical spine taken on October 31, 2007 revealed moderately severe thoracolumbar scoliosis with corrective frontal rod present extending from T4 to L4. Otherwise, the X-ray report indicated a negative lumbar spine without fractures, degenerative changes or acute findings. As to an X-ray of the claimant's cervical spine, the report noted a mild straightening of the cervical lordosis, but otherwise a negative cervical spine (Ex. 4F).

A general physical examination was performed on the claimant by Dr. [REDACTED] on November 29, 2007. At that evaluation, the claimant reported that he was disabled because he was unable to pick up anything over 50 pounds due to a scoliosis repair of his back. He stated that he was able to bend and lift, but his back was weak and he could not pick up more than 50 pounds without pain. He had no problems standing and said he could stand for three to four hours and walk without any limitation. During his physical examination, Dr. [REDACTED] noted that the

claimant's range of motion in his lumbar spine was reduced, but the range of motion was within normal limits in all of his extremities. He noted no muscle weakness and no muscle atrophy and his limb functions were normal. Dr. [redacted] diagnosed the claimant with severe scoliosis of the spine status post surgical repair with rods; limitation of motion of twisting and bending due to surgical repair; and mental retardation with a probable IQ of 80. Dr. [redacted] further opined that the claimant would have moderate limits with physical duties, in that he could lift 40 to 50 pounds once an hour but not every 5 minutes. He also believed the claimant would have severe limitations with comprehension of most jobs (Ex. 5F).

The claimant underwent a Mental Diagnostic Evaluation and Intellectual Assessment with [redacted] PhD, on December 3, 2007. The claimant's mother reported that the claimant's speech was impaired and he stuttered. She also indicated that his socialization skills were not good, he was slow to communicate and he didn't handle stress well. The claimant had no past history of psychiatric treatments and was not taking any medication. It was also reported that the claimant lived with his family; he helped out around the house doing dishes and laundry; he was able to cook, drive and go shopping by himself; and he had friends he spent time with. The claimant graduated high school in resource classes and graduated the vocational-rehabilitation school in 2006, where he trained in food service. [redacted] noted that the claimant's mood was normal, his affect was appropriate, his speech was slow, and his thought processes and content were logical and appropriate (Ex. 6F).

Results from the Wechsler Adult Intelligence Scale (WAIS-III) revealed a Verbal IQ of 71, a Performance IQ of 85 and a Full Scale IQ of 76. [redacted] diagnosed the claimant with adjustment disorder with mixed emotional features and a global assessment of functioning between 60 and 70, which was indicative of moderate to more mild symptoms. Dr. [redacted] also felt that the claimant's mental impairments did not appear to significantly interfere with the claimant's day to day adaptive functioning; the claimant communicated and interacted in a socially adequate manner although not as finessed as most people would like, he did make good eye contact and his communication was effective although somewhat slow; he would be able to cope with the cognitive demands of most work like tasks; and he was able to complete tasks within an acceptable timeframe with the possible exception of written expression which was slow. Finally, Dr. [redacted] believed that the claimant would be able to manage funds without assistance (Ex. 6F).

In regard to any other alleged disabling conditions and/or symptoms as alleged by the claimant, as noted in detail in this discussion above, there is no objective medical evidence from which to conclude the claimant has required any more than intermittent evaluation and treatment at most.

The overall nature and severity of the claimant's impairments have not been as severe, debilitating and/or resistant to improvement with medical treatment intervention as alleged by the claimant. It must be emphasized that the Administrative Law Judge is bound by the Social Security Act and applicable regulations in reaching a final conclusion on the issue of disability.

The claimant has described daily activities which are not limited to the extent one would expect, given the complaints of disabling symptoms and limitations. In a Function Report, he indicated the ability to prepare meals, do household chores, drive a car and maintain social relationships

with people outside of his family (Ex. 4E). The claimant reported to Dr. [REDACTED] that he helped out around the house doing dishes and laundry; he was able to cook, drive and go shopping by himself (Ex. 6F). The record shows and the claimant confirmed in his testimony, that he spent time watching television, driving a car and playing video games. The performance of these activities is inconsistent with a conclusion that he claimant does not have sufficient concentration, persistence or pace to perform the basic mental activities of work.

The claimant did undergo surgery for the alleged impairment, which certainly suggests that the symptoms were genuine. While that fact would normally weigh in the claimant's favor, it is offset by the fact that the record reflects that the surgery was generally successful in relieving the symptoms. Records from Arkansas Children's Hospital from March, 2001 showed that the claimant's scoliosis was much improved and his spinal fusion was stable. The claimant did complain of numbness around the incision and some pain in his left shoulder when lifting weights, but no complaints of back pain (Ex. 1F). The claimant was to return to see Dr. [REDACTED] in six months, but there was no indication in the file that the claimant followed-up on recommendations made by the treating doctor, which suggests that the symptoms may not have been as serious as has been alleged in connection with this application and appeal. The record also reveals relatively infrequent trips to the doctor for his allegedly disabling symptoms since his last appointment at Arkansas Children's Hospital in 2001.

Despite the complaints of allegedly disabling symptoms, the claimant has not taken any medications for those symptoms. The claimant testified that he will take over the counter pain medication to help relieve his headaches, but there was no indication of any prescription medication for back pain.

The Arkansas Rehabilitation Services believed that the claimant had potential for rehabilitation, even though he would be limited due to a reading and mathematics disorder. A work evaluation completed in January, 2005 found that the claimant would have problems with lifting up to 85 pounds and limitations involving his back related to his back surgery, but he had no problems with the use of his extremities, coordination or speech (Ex. 3F). In fact, the claimant testified that he was able to perform and complete the requirements of the food service program. The claimant explained to Dr. [REDACTED] in November, 2007 that he was disabled because he was not able to pick up anything over 50 pounds. He further indicated that he had no problems standing and that he could stand for three to four hours and walk without any limitations. In a Function Report completed one month earlier, the claimant indicated that he was only walk for about 20 minutes before needing to rest (Ex. 4E). The claimant testified at the hearing that he could only stand up for about 30 to 60 minutes before his back would begin hurting. Although the inconsistent information provided by the claimant may not be the result of a conscious intention to mislead, nevertheless the inconsistencies suggest that the information provided by the claimant generally may not be entirely reliable.

In fact, Dr. [REDACTED] believed that the claimant was only moderately limited in relation to his physical problems (Ex. 5F). X-rays taken in October, 2007 also failed to reveal the type of significant clinical and laboratory abnormalities one would expect if the claimant were in fact disabled due to his scoliosis (Ex. 4F).

Given the claimant's allegations of totally disabling symptoms, one might expect to see some indication in the treatment records of restrictions placed on the claimant by treating doctors. Yet a review of the record in this case reveals no restrictions recommended by the treating doctor. The record contains an opinion from a non-treating doctor which supports the residual functional capacity reached in this decision. Dr. [redacted] believed that the claimant could lift 40 to 50 pounds once an hour, but not every 5 minutes and that he would have severe limitations with comprehension of most jobs (Ex. 5F). Dr. [redacted] confirmed that the claimant was functioning in the borderline range of intelligence, but based on his adaptive functioning, he believed that the claimant would be able to cope with the cognitive demands of most work like tasks and he was able to complete tasks within an acceptable timeframe with the possible exception of written expression (Ex. 6F).

The residual functional capacity conclusions reached by the physicians employed by the State Disability Determination Services also supported a finding of 'not disabled.' Although those physicians were non-examining, and therefore their opinions do not as a general matter deserve as much weight as those of examining or treating physicians, those opinions do deserve some weight, particularly in a case like this in which there exist a number of other reasons to reach similar conclusions.

The evidence establishes that the claimant, despite his impairments, has adequate limb function, mobility and range of motion and his activities of daily living are not unduly restricted. His physical and/or mental symptoms, limitations and/or restrictions do not preclude him from the performance of simple work activity. Although he is marginally illiterate, there is no indication in the record that the claimant is not able to learn tasks by rote which requires few variables or little judgment and that he can follow simple, direct and concrete supervision.

Upon careful consideration, the Administrative Law Judge finds that the claimant has the residual functional capacity to perform work at the light exertional level but with non-exertional limitations related to his borderline intellectual functioning and his learning disorders.

- 5. The claimant has no past relevant work (20 CFR 416.965).**
- 6. The claimant was born on [redacted] and was 21 years old, which is defined as a younger individual age 18-49, on the date the application was filed. (20 CFR 416.963).**
- 7. The claimant has at least a high school education and is able to communicate in English (20 CFR 416.964).**
- 8. Transferability of job skills is not an issue because the claimant does not have past relevant work (20 CFR 416.968).**
- 9. Considering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 416.969 and 416.969a).**

In determining whether a successful adjustment to other work can be made, the undersigned must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11). When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has non-exertional limitations, the medical-vocational rules are used as a framework for decision-making unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or non-exertional limitations (SSRs 83-12 and 83-14). If the claimant has solely non-exertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decision-making (SSR 85-15).

If the claimant had the residual functional capacity to perform the full range of light work, a finding of "not disabled" would be directed by Medical-Vocational Rule 202.20. However, the claimant's ability to perform all or substantially all of the requirements of this level of work has been impeded by additional limitations.

To determine the extent to which these limitations erode the occupational base of unskilled work at the light level, the Administrative Law Judge asked the vocational expert whether jobs existed in the national economy for an individual with the claimant's age, education and work experience and residual functional capacity. The vocational expert testified that given all of those factors the individual would be able to perform the requirements of representative occupations such as light housekeeping or shirt presser. The vocational expert estimated the existence of approximately 1,800 in the Arkansas economy, 15,000 assembler of housekeeping jobs in the regional economy and 300,000 in the national economy. As to shirt presser jobs, the vocational expert estimated the existence of approximately 1,600 jobs in the Arkansas economy, 2,500 in the regional economy and 300,000 in the national economy. The vocational expert further indicated that the light housekeeping positions would not be paced jobs and the shirt presser position would not be fast paced.

Pursuant to SSR 00-4p, the vocational expert's testimony is consistent with the information contained in the *Dictionary of Occupational Titles*.

Based on the testimony of the vocational expert, the undersigned concludes that, considering the claimant's age, education, work experience, and residual functional capacity, the claimant is capable of making a successful adjustment to other work that exists in significant numbers in the national economy. A finding of "not disabled" is therefore appropriate under the framework of the above-cited rule.

**10. The claimant has not been under a disability, as defined in the Social Security Act, since October 5, 2007, the date the application was filed (20 CFR 416.920(g)).**

**DECISION**

Based on the application for supplemental security income filed on October 5, 2007, the claimant is not disabled under section 1614(a)(3)(A) of the Social Security Act.

  
\_\_\_\_\_  
Administrative Law Judge

July 31, 2009

Date



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(The following is a transcript in the hearing held before [redacted], Administrative Law Judge, Office of Hearings and Appeals, Social Security Administration, on May 27, 2009, at Hot Springs, Arkansas in the case of [redacted], Social Security Number [redacted]. The Claimant appeared in person and was represented by [redacted] Attorney. Also present were [redacted] Vocational Expert; and [redacted] witness for the Claimant; and [redacted], observer.)

(The hearing commenced at 9:07 a.m., on May 27, 2009.)

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

ALJ: This is a hearing in the case of Mr. [redacted], Social Security number [redacted]. Mr. [redacted] is a claimant for SSI. The hearing is being held in Hot Spring, Arkansas, on May 27, 2009, at 9:05 a.m. Mr. [redacted] my name is Bob Neighbors. I'm an Administrative Law Judge. Mr. [redacted] is present in the hearing room with his attorney, Miss [redacted]. The claimant's mother, Miss [redacted] and his stepfather, Mr. [redacted], are present as witnesses on his behalf. Miss [redacted] is present at my request. Miss [redacted] is an independent vocational expert witness. Miss [redacted] any objection to the proposed exhibits?

ATTY: No, sir.

ALJ: They'll be admitted. Do you anticipate any additional?

ATTY: No, sir.

ALJ: Very good.

(Exhibits, previously identified, were received into evidence and made a part of the record thereof).

ALJ: If you plan to testify, please raise your right hand and be sworn. If you're going to testify, you got to take the oath. Are you going to testify?

OBS: No.

ALJ: All right. Call your first.

ATTY: Thank you. Claimant called,

ALJ: All right.

(The Claimant, \_\_\_\_\_, having been first duly sworn, testified as follows:)

EXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE:

Q Kevin, state your name for the record, please.

A \_\_\_\_\_ s.

Q Where do you live?

A \_\_\_\_\_

Q And you live with your mom and your step dad?

A Yes.

Q How long, well, I guess I have you always lived with your mom and your step dad since you were a little baby?

A Yes.

Q And you went to high school at Lake Hamilton?

A Yes.

Q And graduated in 2005? Is that right?

A 2006.

Q Well, I wrote down the wrong date. I'm sorry. All right. You graduated in 2006, and right now you are twenty --

A Two.

Q -- two. When you were in high school, well, what year did you get to Lake Hamilton, fifth grade?

A When I first went to Lake Hamilton I was in second grade.

Q In second grade, okay. And then you stayed there for the rest of your schooling?

A Yeah.

Q And at Lake Hamilton you were in special education?

A Yes.

Q When you were in high school which classes were you in special education for?

A Practically for reading, math, what else? I think science. Practically almost all the --

Q All the classes?

A Yeah, all the classes.

Q Okay. And then the last couple of years they had you going to school half a day and then going to training at the rehab the rest of the day?

A Yeah.

Q Is that the way it worked?

A Practically like, yeah, like it was most; practically it was practically all the way to lunch and I had probably like two classes and that's all I had. Practically it was like a little over half, not much of the day.

Q At school or at the rehab?

A At the rehab.

Q Okay. And you went there for two years?

A Yeah.

Q All right. What were they training you to do?

A Food service like cooking, baking, frying.

Q All right. Did you finish that program?

A Yes.

Q And did they help you try to get a job after that?

A Not, well, not that, not really much, not really. It kind of, they were, they were helping just a little. It wasn't really helping me that much. It just --

Q All right. Since, well, at the rehab I guess you worked in the kitchen.

A Yeah.

Q And then since leaving the rehab have you worked anywhere else?

A No.

Q You told me yesterday about you worked at National Park Medical Center for a while?

A Yeah, that was the internship. That was when I was in the rehab. They took me to, to a internship to try to get a job there.

Q Okay. In the kitchen at National Park Medical Center?

A Yeah.

Q And what did they tell you at National Park Medical Center?

A They told me I wasn't fast enough for the job.

Q All right. So they wouldn't hire you?

A No.

Q All right. And since that time have you tried to get work other places?

A Yes.

Q Where all have you tried to get work?

A A lot of places, restaurants, grocery stores, some I don't know, I think a hardware store and like (INAUDIBLE).

Q All right. And have you had interviews at any of these places?

A Yeah, some of them. I had a interview at Olive Garden, okay, I know I had more, I just don't remember. I don't remember the others.

Q Okay. But there have been others?

A Yeah.

Q But nobody has hired you yet?

A No.

Q And I guess you've continued all this time to look for a job?

A Yeah.

Q When you go someplace to get an application for a job, do you sit down right there and fill out the application or do you take it home with you?

A I, sometimes, sometimes I do it in the restaurant and it depends if it's, if I can't do the whole thing I usually take it home.

Q All right. Most times do you get help filling out a job application?

A Yes.

Q Who helps you?

A My step dad and my mom.

Q All right. What about like, you've applied at Wal-Mart before?

A Yes.

Q You do those applications on a computer, don't you?

A Yeah.

Q And were you able to do that one by yourself?

A Not really. Last time, the first time when I done it they asked for questions on it and that helped, I had to have help on it. The other times, the other time I filled out application they changed it up and it was a little easier because they didn't ask those questions.

Q Okay. But the other time you were able to do it by yourself?

A Yeah.

Q All right. Now, what kind of problems in your day to day life do your education and your learning problems give you?

A Like trying to communicate with people.

Q Do you often times have trouble understanding what people are telling you?

A Yeah. And if people ask you to do things do you have trouble understanding what they are asking you to do?

Q Yes. If you want to ask a question about what you're supposed to do, do you have trouble with asking the question sometimes?

A Yes.

Q You also have scoliosis?

A Yes, I did and I had surgery on it.

Q All right. And they did surgery on you at Children's Hospital in 2001?

A Yeah, I think it was, yeah.

Q Okay. And you've got rods and things in your back?

A Yes.

Q And is your spine still curved a little bit?

A It shouldn't.

Q Shouldn't be?

A Yeah, it shouldn't be.

Q Does your back give you any problems now?

A Right now it's in the, it's hurting a little now how I'm sitting right now.

Q Does it, does it make it sometimes when you can't do things?

A Yes.

Q What kinds of things does your back make it where you can't sit?

A Like hard to, I have a hard time, I have a more hard time to bend over and more harder time trying to get up or like, for example, when I'm sleeping if I don't have a comfortable bed my back hurts so much, it feels like I can't get up.

Q All right. And if you stand up for a long time does it make your back hurt?

A Yes.

Q How long can you stand up before your back starts hurting?

A Somewhere around 30 to a hour.

Q All right. And when you were training at the rehab, the food service job had you working eight hours a day with a break?

A Yes.

Q And that was pretty much a stand up job?

A Yes.

Q Were you able to do that without your back hurting?

A No, I wasn't able to.

Q Did some days by the end of the shift did you have to go to your room then and lie down?

A Yeah. Yes, I do. Like usually like half of that week I used to usually go to my room and lay down.

Q Okay. Because of your back hurting?

A Yeah.

Q All right. And does your back, does it also limit how much you can pick up?

A Yes.

Q If you try to pick up some things it hurts your back?

A Yeah.

Q All right. And you get headaches a lot?

A Yes.

Q In a week, how many times will you have a headache?

A I don't know. Probably almost probably five times a week.

Q All right.

A Every, like every, no way, no. No, it depends what I'm doing, too. It depends. If I'm just watching TV, if I'm like doing some work like some work like in the heat and stuff I get headaches quite easily. And sometimes when I do a lot of work fast it gives me a headache.

Q Like when you were telling me about when you were having to serve the food at the rehab --

A Yeah.

Q -- and make sure all the food, that there was enough food out and during lunchtime when it got kind of fast and stressful, is that

the kind of thing that brings on a headache?

A Yes.

Q And if you, if you have a job where you stand up for a long time, does that make your head hurt?

A Yes.

Q And I think I read in your file that turning your head from side to side makes your head hurt.

A It doesn't really do that. It hurts my neck and my back when I do it. It's mostly, it's practically when I drive it does, it hurts. When I turn my head the, it's not the way you look behind you. It's just like when you look out on your side of the window, on your side mirror, look on that side, I can't really turn my neck that well.

Q Okay. And that makes your neck and your back hurt?

A Yeah.

Q All right. And I want to go back and talk about the headaches for just a minute. When you have a headache what does it feel like?

A It depends how bad I get it. The worst I got is when my head is pounding and I have a hard time. I lay down trying to get rid of it and I just can't get rid of it because it's so pounded and it takes a while. Usually I have to take, have to wait, have to take like some more medicine to make it go away much more, much more faster.

Q And do they get that bad very much?

A Since the, since now they ain't been getting that bad because I've been catching it, I've been catching my head when it starts to hurt a little. I've been taking the medicine and I haven't been getting that much, that much painful headaches.

Q Okay. And if you catch it early enough, do you take ibuprofen?

A No.

Q If you catch it early enough and take that, then it doesn't get so bad you have to lie down?

A Yes.

Q All right. But if you don't catch it in time then they get that bad?

A Yes.

Q Now what kinds of things, what, is there anything you want the Judge to know about you and your conditions and your ability to work or not to work?

A I'm not really, I'm not really saying, I'm not really saying not. I'm not really saying I can't really work, I can't really work permanently. I can work a little, not much. It's just I got a limit I can work because if I work to, if I get to a limit, I end up getting headaches and my back hurt and I just --

Q You're not saying that you can't do anything?

A Yeah.

Q You're just saying that it's all day, every day?

A Yeah.

Q It's more than you think you can handle. Now do you have a checkbook?

A No.

Q No? And do you have a bank account?

A No.

Q Are you able to make change and go to the store and pay for things?

A Yes.

Q Can you do that by yourself and --

A Yes.

Q And you do have a driver's license?

A Yes.

Q Does it have any restrictions about night driving or anything like that?

A No.

Q Is there anything else that you think the Judge should know about you that I haven't asked you about? If there's not --

A I think, yeah, I think not.

Q All right.

ATTY: Nothing further, Judge, at this time.

ALJ: Okay. Call your next.

ATTY: All right. I'll call his step dad,

ALJ: All right.

(The Witness, having been first duly sworn, testified as follows:)

EXAMINATION OF WITNESS 1 BY ATTORNEY:

Q Mr. for the record, state your name, please.

A My name is.

Q And how long have you been part of life?

A Since he was about a year, nine months to a year.

Q All right. And have you lived in the same house with him since that time?

A Yes.

Q All right. What kinds of difficulties have you observed having that impact his ability to hold a job?

A Well, his communication skills. He had a real hard time communicating, understanding people and just having a regular conversation, as you can see when you were talking to him. You know, his eye contact with other people is just ain't there. His posture has affected taking care of himself as far as being able to bend down and wash his feet. He has to lean against the wall and bring his feet up to was his feet. Just a lot of learning disabilities. I believe that is going to (INAUDIBLE) life. Just to maintain a job he can't do normal speed.

Q Does he have friends that he socializes with now?

A He does have a couple friends that he, he's only got one or two friends.

Q All right. Any girlfriend that you know of?

A No.

Q And what kinds of stuff like do you see do?

A Well, the things that I see him do on a daily basis is watch TV and Play Station 2. As far as drugs and things, (INAUDIBLE). As far as riding a bicycle, he can ride a bicycle.

Q Now has helped you from time to time about doing yard work for people?

A Yes. He helps mow a lawn and I have a self-propelled mower that he would use most of the time (INAUDIBLE). It wasn't a push mower. It was self-propelled. Even doing that after an hour he was

(INAUDIBLE).

Q All right. And as far as, as far as getting out and communicating with people, have you witnessed any misunderstandings or instances where he wasn't getting his point across to people?

A He has a hard time explaining things. Explaining things to people, you know, yeah. I think gets overwhelmed, something small. He worries. I just notice that he does that a lot.

Q Is he a worrier?

A Yes. He worries without a doubt.

Q And have you noticed that when he does something it takes longer than what would be considered an average amount of time?

A Yes, definitely.

Q What kind of things?

A As far as doing dishes it normally takes the average person, you know, an hour to do dishes and it's two and a half hours.

Q Does he do a good job?

A He does a good job. He does a good job.

Q Is there anything else that you think that the Judge needs to know about and his abilities or inabilities that you don't think we've covered?

A Well, I feel that, I mean I don't know if his posture has, I think, a lot to do with it. I think when he does go into an interview they automatically see his posture and that's just not human, the way he's seen. His posture is going to affect a lot of things in his life and it's a permanent thing, and I feel like the little pains that he has now, the headaches, the getting out of bed, you know, he'll get

out of bed and uh, oh, oh, now (INAUDIBLE). If he gets a hold of a job he might be able to work an hour or something like that, but not to make a living. There's no way that is going to be able to work.

Q Okay.

ATTY: That's all I have, Judge.

(The Vocational Expert, having been first duly sworn, testified as follows:)

EXAMINATION OF VOCATIONAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q Miss [redacted] would you tell us your name, please?

A [redacted].

ALJ: Miss [redacted]'s qualifications are in the file. I find that she is a qualified vocational expert witness.

BY ADMINISTRATIVE LAW JUDGE:

Q Miss [redacted], apparently [redacted] has no work history which would qualify his past relevant work so we'll proceed directly to the first hypothetical. Please assume an individual 22 years of age with a high school diploma, but with several resource classes. Assume marginal literacy. Yeah, assume, I'm sorry, assume reading and mathematics disorders. He does have a full scale IQ of 71. Assume a light exertional residual functional capacity. That is able to stand and walk six hours out of an eight-hour work day, sit six hours out of an eight-hour work day, lift and carry 20 pounds occasionally, 10 pounds frequently. Most of what follows, a lot of the non exertional limitations I'm going to give come from the Arkansas Rehabilitation Service. That's part of Exhibit 3F. But first, Miss [redacted] please assume the individual is limited to unskilled work. That is can have

interpersonal contact which is incidental to the work performed. Tasks must be learned by rote and require limited judgment. The individual would require little supervision for routine tasks with detailed supervision for non routine tasks. According to the Arkansas Rehabilitation Service the individual is limited, learning disorders suggest that formal classroom training would not be a good training method. The individual would do better in on the job training. Would be better on work that requires that work be performed slowly, carefully, more slowly, carefully and correctly rather than very quickly. That's from Arkansas Rehabilitation Service. I'm jumping around really bad on this and I apologize to everybody for that, but as far as the education is concerned, add to that the individual has completed an Arkansas Rehabilitation Service course in food service, that is primarily cooking and baking. Based on these limitations, are there any jobs that exist in significant numbers that such an individual could perform?

A Yes, sir. Within those limits there are unskilled, light jobs that he could perform, Your Honor. Examples would be any of your, let me get my record materials, Your Honor. Any of your light housekeeping jobs. These are not paced jobs, Your Honor, which I'm assuming that would fit within that limitation that you have there. And we have over 15,000 in the region and over 300,000 nationally.

Q Do you have Arkansas numbers?

A Yes, sir. We have over 1800.

Q Okay.

A This is the light ones, Your Honor, not the medium level.

Q All right.

A Okay. And also jobs such as your shirt pressers. Again, these are not fast-paced jobs. Over 1,600 in the region and over 30,000 nationally.

Q I'd rather have Arkansas than the region if you have it.

A Okay. Sixteen-hundred, that's for Arkansas, Your Honor.

Q Okay.

A And over 2,500 in the region and over 30,000 nationally. I'm sorry.

Q All right. Okay. For the same hypothetical, same age, education and no past relevant work as hypothetical number one, assume an ability to stand and walk four hours out of an eight-hour work day, sit two hours out of an eight-hour work day, poor ability to maintain concentration, persistence and pace. Are there any jobs that exist in significant numbers that such an individual could perform?

A No, sir.

ALJ: Miss [redacted] do you have anything for Miss [redacted]?

ATTY: I have a couple, yes.

ALJ: Okay.

EXAMINATION OF VOCATIONAL EXPERT BY ATTORNEY:

Q Miss [redacted], hypothetical number two that the Judge gave --

A Yes.

Q -- instead of sit two, if we were to change that to six hours out of an eight-hour day but stand only up to four and all the same parameters, are there any jobs of that type?

A No. We're not basing it on that poor rating on limitation of

concentration, persistence and pace, the jobs that he would qualify for would require that he be able to at least maintain the attention and concentration and pace for up to that minimum two-hour standard. And if it's a poor rating which is basically severe, then he wouldn't be able to work.

ALJ: Your Honor, I don't have any other questions.

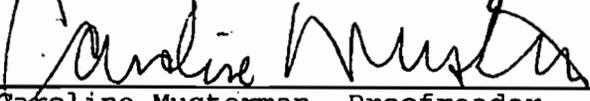
ATTY: Okay. Thank you all very much. There being nothing further, that will conclude the hearing at 9:39 a.m. Thank you.

(The hearing closed at 9:40 a.m., on May 27, 2009.)

C E R T I F I C A T I O N

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded at the hearing held before Administrative Law Judge Robert L. Neighbors.

  
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Pama L. Almon, Transcriber  
Free State Reporting, Inc.

  
\_\_\_\_\_  
Caroline Musterman, Proofreader  
Free State Reporting, Inc.