

**SOCIAL SECURITY ADMINISTRATION**

Refer To: [REDACTED]

Office of Disability Adjudication and Review
SSA ODAR Hearing Ofc
Suite 201
2301 W. 22nd Street
Oak Brook, IL 60523

Date: May 17, 2013

Martin Thomas Mitchell
6088 Chase Avenue
Downers Grove, IL 60516

Notice of Decision – Fully Favorable

I carefully reviewed the facts of your case and made the enclosed fully favorable decision. Please read this notice and my decision.

Another office will process my decision and decide if you meet the non-disability requirements for Supplemental Security Income payments. That office may ask you for more information. If you do not hear anything within 60 days of the date of this notice, please contact your local office. The contact information for your local office is at the end of this notice.

If You Disagree With My 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 ask in writing that the Appeals Council review my decision. You may use our Request for Review form (HA-520) or write a letter. The form is available at www.socialsecurity.gov. Please put the Social Security number shown above on any appeal you file. If you need help, you may file in person at any Social Security or hearing office.

Please send your request to:

Appeals Council
Office of Disability Adjudication and Review
5107 Leesburg Pike
Falls Church, VA 22041-3255

Time Limit To File An Appeal

You must file your written appeal **within 60 days** of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did not get it within the 5-day period.

The Appeals Council will dismiss a late request unless you show you had a good reason for not

Form HA-L76 (03-2010)

See Next Page

filing it on time.

What Else You May Send Us

You or your representative may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence **with your appeal**. Sending your written statement and any new evidence with your appeal may help us review your case sooner.

How An Appeal Works

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

The Appeals Council may:

- Deny your appeal,
- Return your case to me or another administrative law judge for a new decision,
- Issue its own decision, or
- Dismiss your case.

The Appeals Council will send you a notice telling you what it decides to do. If the Appeals Council denies your appeal, my decision will become the final decision.

The Appeals Council May Review My Decision On Its Own

The Appeals Council may review my decision even if you do not appeal. They may decide to review my decision within 60 days after the date of the decision. The Appeals Council will mail you a notice of review if they decide to review my decision.

When There Is No Appeals Council Review

If you do not appeal and the Appeals Council does not review my decision on its own, my decision will become final. A final decision can be changed only under special circumstances. You will not have the right to Federal court review.

If You Have Any Questions

We invite you to visit our website located at www.socialsecurity.gov to find answers to general questions about social security. You may also call (800) 772-1213 with questions. If you are deaf or hard of hearing, please use our TTY number (800) 325-0778.

If you have any other questions, please call, write, or visit any Social Security office. Please have this notice and decision with you. The telephone number of the local office that serves your

area is (866)303-2724. Its address is:

Social Security
7440 Providence Dr
Woodridge, IL 60517-2181

Janice M. Bruning
Administrative Law Judge

Enclosures:
Form HA-L15 (Fee Agreement Approval)
Decision Rationale

cc: Mary Collins
6912 S. Main Street
Suite 200
Downers Grove, IL 60516

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF

Martin Thomas Mitchell
(Claimant)

(Wage Earner)

CLAIM FOR

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

██████████
(Social Security Number)

I approve the fee agreement between the claimant and his representative subject to the condition that the claim results in past-due benefits. My determination is limited to whether the fee agreement meets the statutory conditions for approval and is not otherwise excepted. I neither approve nor disapprove any other aspect of the agreement.

YOU MAY REQUEST A REVIEW OF THIS ORDER AS INDICATED BELOW

Fee Agreement Approval: You may ask us to review the approval of the fee agreement. If so, write us within 15 days from the day you get this order. Tell us that you disagree with the approval of the agreement and give your reasons. Your representative also has 15 days to write us if he or she does not agree with the approval of the fee agreement. Send your request to this address:

Sherry D. Thompson
Regional Chief Administrative Law Judge
SSA ODAR Regional Ofc
Suite 2901
200 W Adams Street
Chicago, IL 60606-5234

Fee Agreement Amount: You may also ask for a review of the amount of the fee due to the representative under this approved fee agreement. If so, please write directly to me as the deciding Administrative Law Judge within 15 days of the day you are notified of the amount of the fee due to the representative. Your representative also has 15 days to write me if he/she does not agree with the fee amount under the approved agreement.

You should include the social security number(s) shown on this order on any papers that you send us.

/s/ Janice M. Bruning

Janice M. Bruning
Administrative Law Judge

May 17, 2013

Date

disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. 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, or work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. 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 is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is 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 404.1520(e), 404.1545, 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 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b) and 416.965). If the claimant has the residual functional capacity to do 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 404.1520(g) and 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 404.1512(g), 404.1560(c), 416.912(g) and 416.960(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

- 1. The claimant's date last insured is December 31, 2010.**
- 2. The claimant has not engaged in substantial gainful activity since January 3, 2007, the amended alleged onset date (20 CFR 404.1520(b), 404.1571 *et seq.*, 416.920(b) and 416.971 *et seq.*).**
- 3. The claimant has the following severe impairments: degenerative disc disease, obesity, mild facet arthropathy and sacroiliac joint arthritis (20 CFR 404.1520(c) and 416.920(c)).**
- 4. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).**
- 5. The claimant has the residual functional capacity to perform, at most, sedentary work but due to chronic pain, does not have the concentration, persistence and pace to sustain work activity 8 hours per day 40 hours per week (20 CFR 404.1567(a) and 416.967(a)).**

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and 416.929 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and 416.927 and SSRs 96-2p, 96-6p and 06-3p.

Evidence obtained after remand by the Appeals Council includes an October 16, 2008 treating physician's report indicating that claimant had a history of significant back pain warranting potent prescribed medication (Exhibit 18-F at 1). Progress Notes from December 1, 2008 reflect positive straight leg raising test results at only 45 degrees (see Exhibit 23-F at 3) and pain management records throughout 2009 reveal worsening pain, limited lumbar range of motion, severe muscle spasming and adverse side-effects to medication (see Exhibits 22-F and 23-F).

The severity of claimant's back pain warranted Emergency Room treatment four times between May 7, 2009 and July 6, 2009 (see Exhibit 26-F at 2 through 8). The claimant also required Emergency Room treatment for back pain on January 29, 2010; February 13, 2010; March 30, 2010; and April 29, 2010 (see Exhibits 27-F, 33-F and 34-F at 2).

Treating physician, Dr. Towers wrote on May 27, 2010 that claimant had an abnormal gait, could perform practically no lifting and opined that claimant's symptoms would cause him to be absent from a workplace more than four times per month (Exhibit 25-F at 2). In a July 25, 2010 report, Dr. Tower wrote that claimant's symptoms were consistent with his diagnoses and that claimant showed no signs of malingering (Exhibit 36-F at 2). Treating physician, Dr. Glaser indicated on August 4, 2010, that claimant's symptoms have persisted despite multiple forms of aggressive treatment (Exhibit 38-F).

On August 19, 2010 claimant was assessed as wholly unable to perform any lifting or carrying (Exhibit 41-F). Progress Notes thereafter through April 26, 2012 all reflect significant ongoing back pain despite treatment (Exhibits 47-f and 49-F). Emergency Room records from June 5, 2012 mention acute exacerbation of back pain (Exhibit 58-F at 2). In a June 26, 2012 treatment record claimant's back pain was described as "intractable" and he was noted as using crutches (Exhibit 5-F at 3). An earlier May 31, 2012 lumbar MRI confirmed multilevel narrowing as well as a protrusion at L2-3 (Exhibit 53-F). Claimant was subsequently hospitalized on September 13, 2012 for lumbar fusion surgery (Exhibit 60-F)

On November 20, 2012 claimant's symptoms continued to be such that he still was mentioned as needing a back brace (see Exhibit 61-F at 33) and claimant's treating physician reported in April 2013 that claimant still had an abnormal gait and was also experiencing "7/10" pain levels (Exhibit 63-F). He also noted that claimant had symptoms of lower extremity numbness and was very limited in sitting, standing and walking capacity. He opined that, in a work situation, claimant would likely be "off task" 15% of the time and be absent at least two days per month.

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to produce the alleged symptoms and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible. Based on medical expert testimony, the claimant does not have the residual functional capacity to perform even sedentary work on a sustained basis. He pointed out the claimant experiences constant pain despite treatment including surgery. Based on the totality of the evidence, I agree.

The State agency medical consultant's physical assessment is given little weight because evidence received at the hearing level and available to the medical expert shows that the claimant is more limited than determined by the State agency consultant.

6. The claimant is unable to perform any past relevant work (20 CFR 404.1565 and 416.965).

The demands of the claimant's past relevant work exceed the residual functional capacity.

7. The claimant was a younger individual age 45-49 on the established disability onset date (20 CFR 404.1563 and 416.963).

8. The claimant has at least a high school education and is able to communicate in English (20 CFR 404.1564 and 416.964).

9. The claimant's acquired job skills do not transfer to other occupations within the residual functional capacity defined above (20 CFR 404.1568 and 416.968).

10. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c), 404.1566, 416.960(c), and 416.966).

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

If the claimant had the residual functional capacity to perform the full range of sedentary work, considering the claimant's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.21. To determine the extent to which the claimant's additional limitations erode the unskilled sedentary occupational base, the Administrative Law Judge asked the vocational expert whether jobs exist in the national economy for an individual with the claimant's age, education, work experience, and residual functional capacity. The vocational expert testified that given all of these factors there are no jobs in the national economy that the individual could perform.

Based on the testimony of the vocational expert, the undersigned concludes that, considering the claimant's age, education, work experience, and residual functional capacity, a finding of "disabled" is appropriate under the framework of the above-cited rule.

11. The claimant has been under a disability as defined in the Social Security Act since January 3, 2007, the amended alleged onset date of disability (20 CFR 404.1520(g) and 416.920(g)).

DECISION

Based on the application for a period of disability and disability insurance benefits filed on January 24, 2007, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act since January 3, 2007.

Based on the application for supplemental security income filed on January 24, 2007, the claimant has been disabled under section 1614(a)(3)(A) of the Social Security Act since January 3, 2007.

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

/s/ Janice M. Bruning

Janice M. Bruning
Administrative Law Judge

May 17, 2013

Date