

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 March 7, 2005, the alleged onset date (20 CFR 404.1520(b) and 404.1571 *et seq.*).**

The claimant worked after the established disability onset date, but the earnings were minimal. Therefore, this work activity did not rise to the level of substantial gainful activity.

3. **The claimant has the following severe impairment(s): failed back syndrome, post laminectomy syndrome and degenerative joint disease of the bilateral knees (20 CFR 404.1520(c)).**

The above impairment(s) causes more than minimal functional limitations.

4. **The claimant does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525 and 404.1526).**

5. **The claimant has the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(a) except she is unable to sustain work substantial work activity on a full time basis for 8 hours per day, 5 days a week. Social Security Ruling 96-8p.**

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 SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-6p and 06-3p.

The claimant testified that she began to experience severe low back pain. She treated with several physicians including a pain management physician as well as going to several emergency room visits. She testified that she underwent MRI and eventually underwent surgery in June 2005 (Exhibit 1F). The claimant reported that she continued to experience pain which then

shifted to her left side. The claimant testified that she was advised that her back condition was genetic. The claimant further testified that her pain medications make her drowsy. They also cause her to have problems focusing.

Review of the medical evidence demonstrated that the claimant has treated extensively for back complaints. She underwent aggressive pain management which included injective therapy and narcotic medication management all of which failed to alleviate her symptoms (Exhibit 3F). In June 2005, the claimant underwent a transforaminal lumbar interbody fusion at L4-5 (Exhibit 1F). Following surgery, she began to experience radiating pain down her bilateral lower extremities (Exhibit 4F). Although the claimant underwent physical therapy and aggressive pain management after surgery, these treatments failed to alleviate her pain (Exhibits 1F, 2F, 4F-6F, 16F, 17F). Furthermore, the claimant's treating pain management physician, Orlando Florete, Jr., M.D. opined that the claimant's conditions were so debilitating that she was unable to work for an indeterminate period of time (Exhibit 13F).

On August 15, 2007, a consultative exam was performed by Debbie R. Brewer Kelly, M.D. She noted that prior MRI and x-rays studies showed spondylolisthesis and degenerative joint disease with marked narrowing at L5-S1 and slippage of L5 on S1 which the claimant was advised was a birth defect. The claimant's complaints included daily low back pain that radiated into her left foot. It was noted that she used a walker for support. She stated she was unable to stand for more than 45 minutes, bend, vacuum or sit for longer than 1 hour. Physical exam demonstrated that she had decreased range of motion with tenderness over the lower thoracic and midline lumbar spine. Neurological exam revealed deep tendon reflexes were +2/4 in all extremities. She was unable to walk heel-to-toe, walk on heels and walk on toes. Straight leg raising was painful on the left. Her gait was slightly antalgic. Diagnoses included history of lumbar spondylosis with lumbar spine fusion surgery, chronic low back pain with radiculopathy and history of left hip fracture. Dr. Kelly opined that the claimant would benefit from using assistive device for support given history of her legs giving out. She did not feel that the claimant had any cognitive limitations with memory, attention or concentration. However, the claimant was to avoid prolonged standing, walking, heavy lifting, pushing, pulling or repetitive bending and stooping (Exhibit 7F).

Review of the medical evidence also shows that the claimant has a history of bilateral knee pain. In February 2009, the claimant was seen by Carlos Tandron, M.D. It was noted that the claimant's past treatment had included pain medications as well injections which did not provide any lasting relief. Diagnoses included degenerative joint disease of the bilateral knees, left knee chronic ACL tear and possible degenerative meniscal tears. Due to her young age, Dr. Tandron did not recommend surgery at this time (Exhibit 15F).

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairment 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.

The State agency medical consultants' physical assessments are given little weight because the opinions of the claimant's treating physicians is more consistent with the record as a whole and

evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultants. Moreover, these evaluators made their assessments without the benefit of an examination of the claimant and without consideration of newly added evidence which cause their assessments to be invalid (Exhibits 9F, 11F).

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

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

7. The claimant was a younger individual age 18-44 on the established disability onset date (20 CFR 404.1563),

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

9. Transferability of job skills is not an issue in this case because the claimant's past relevant work is unskilled (20 CFR 404.1568).

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) and 404.1566).

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 201.27. However, the additional limitations so narrow the range of work the claimant might otherwise perform that a finding of "disabled" is appropriate under the framework of this rule. This conclusion is supported by Social Security Ruling(s) SSR 96-8p.

11. The claimant has been under a disability as defined in the Social Security Act since March 7, 2005, the alleged onset date of disability (20 CFR 404.1520(g)).

DECISION

Based on the application for a period of disability and disability insurance benefits filed on April 30, 2007, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act since March 7, 2005.