

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

- 1. The claimant meets the insured status requirements of the Social Security Act through March 31, 2010.**
- 2. The claimant's earnings in has not engaged in substantial gainful activity at any time relevant to this decision (20 CFR 404.1520(b) and 404.1571 et seq.).**
- 3. The claimant has the following severe impairments: Sickle cell disease, chronic and severe neck pain secondary to cervical spine spondylosis at C4 through C6, restrictive lung disease, status post myocardial infarction times two, status post cerebral vascular accident (CVA), and sickle cell retinopathy (20 CFR 404.1520(c)).**

The above impairment causes significant limitation in the claimant's ability to perform basic work activities.

- 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)).**
- 5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform less than the full range of sedentary work.**

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, which is outlined below, in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-5p and 96-6p.

OBJECTIVE AND OPINION

The claimant suffers from Sickle cell disease (with recurring crises), cervical spondylosis, sickle retinopathy, severe restrictive lung impairment, and residual effects from a heart attack at age 18 All but the cervical spondylosis have been directly caused by the claimant's Sickle cell disease and all have existed prior to his alleged onset date of July 24, 2003. These pre-existing impairments have been supported by objective medical evidence, including blood work, MRI reports and a pulmonary function study, **Exhibit 2F**.

As of his onset date, the claimant finally became unable to engage in even sedentary work on a regular and continuing basis due to the worsening of his impairments; in combination with new neurological problems. On July 11, 2003, the claimant was taking a break at work. While sitting in a truck and taking a sip of water, he suddenly lost consciousness for approximately two minutes. After he awoke, he had no memory for the event. A witness later told him that it appeared he had suffered a "silent seizure". An ECG was performed that was borderline and revealed left atrial abnormality, **Exhibit 2F, pages 1-13**.

On January 24, 2004, the claimant was seen for follow-up at Shands Jacksonville. He was feeling better but still had left hand weakness and difficulty with concentration, **Exhibit 3F, pages 1-3**.

On June 4, 2004, the claimant presented to the emergency room at St. Vincent's Medical Center with a complaint of left arm weakness, and pain in his neck, arm and left leg. Neurological examination revealed decreased strength in the left upper extremity of 4+/5 and group strength was decreased to 4/5. Sensation was lightly decreased to light touch in the left upper extremity and extending into the mid chest area. The claimant was initially started on aspirin and then underwent a MRI of the brain, which showed several small foci of abnormal T2 signal within the high frontal parietal region, right greater than left. Several of these lesions demonstrated restriction diffuse on the right suggest acute/subacute infarcts. A MRI of the cervical spine showed multi-level degenerative disc disease with right paracentral and right lateral disc protrusion at C5, mild narrowing of the spinal canal at C6-7, and right neural foraminal narrowing at C5-C6 and C6-C7. The claimant was discharged after four days at which time his hemoglobin was 11.1 with only few sickle cells appearing on the smear. His discharge instructions were to follow up with Dr. Sykes after one to two weeks and also a follow-up with hematology. His discharge diagnoses were multi-focal cerebrovascular accident secondary to sickle cell disease and cervical spondylosis, **Exhibit 4F, pages 6-7**.

On May 21, 2006, the claimant was admitted to Shands Jacksonville with complaints of chest pain. It was characterized as a constant feeling of tightness. The pain radiated down into both lower extremities, which the claimant had experienced in the past. The claimant had coarse breath sounds bilaterally with inspiratory crackles over the bilateral lung bases. The claimant noticed shortness of breath even upon minimal exertion. Chest x-ray showed bilateral pneumonia and probable left pleural effusion and he was therefore admitted for observation and further testing. On May 22, 2006, the claimant underwent a hematology/oncology consultation. At the time the consult was performed, the claimant was anxious, tachypneic, tachycardic on a non-breather mask satting 93% and desaturation when was removed from the mask. Hypoxemia was documented during his initial admission to the emergency room and his hemoglobin was low (8.1 with normal readings being 14.0-18.0), **Exhibit 11F**.

On July 6, 2006 the claimant went to Shands for a follow up examination. He still complained of long-standing back pain, radiating to the flank, sharp/shooting pain, exacerbated by lying down on his back. The pain was temporarily relieved by Aleve, lying on his side and the use of a heating pad. The claimant also complained worsening vision problems secondary to his retinopathy. On August 3, 2006, the claimant underwent reattachment of the retina, which has improved his eyesight considerably, **Exhibit 11F**.

On September 7, 2006, the claimant presented again to Shands with complaints of persistent dizziness that was not related to any particular activity or orthostatic

changes. This was accompanied by pain that radiated from the back of his head and neck into his arms. Physical exam was essentially normal but in light of the claimant's worsening eyesight he was referred for an ophthalmology consult. A repeat MRI of the spine was also ordered in light of the claimant's pain symptoms, **Exhibit 11F**.

On November 16, 2006, the claimant underwent a neurological evaluation at Shands by Timothy, Lucey, D.O(R). The claimant had been experiencing neck and interscapular pain for approximately thirty days prior to this appointment. He also reported feeling lightheaded and losing his balance. He rated the pain between his shoulder blades as a 9, out of a 1-10 scale, with 10 being the most severe pain. He described some weakness in his right hand worse than the left and he was dropping things. He also noted swelling around his wrist and palm of his hand. He was also suffering from headaches but always occurring on the left side. He described it like a muscle was pulling and the pain he rated an 8. A review of MRI films confirmed cervical spondylosis at C4 through C6. Physical exam was notable for mild atrophy of the left thenar eminence and to a lesser extent on the right side. There was weakness with posting the thumb and of the abductor pollicis brevis muscle on the left hand side. Dr. Lucey's plan was to order a nerve conduction EMG and brain MRI and to follow up with the claimant to review the results **Exhibit 11F**.

CLAIMANT'S TESTIMONY

The claimant has testified that due to the combination of his multiple impairments, he does not have the persistence and pace to engage in full time employment on a regular basis. Fortunately, he does enjoy periods when he is doing relatively well—and can engage in some activities of daily living, including yard work and household chores. However, he also testified that he suffers from exacerbation of his symptoms frequently enough to require him to be absent from work at least three or four days per month. As previously stated, Dr. Rand supported this claim in the functional questionnaire that she completed. Clearly the claimant would be unable to find gainful employment if he was expected to miss that many days of work per month (which doesn't take into account any future hospitalizations and/or other non-related illnesses).

It is well settled that a claimant's subjective testimony regarding his pain and other symptoms, supported by medical evidence, is itself sufficient to support a finding of disability. Foote v. Chater, 67 F.3d 1553, 1561 (11th Cir. 1995). The Secretary must consider the claimant's subjective testimony of pain if evidence of an underlying medical condition is found, plus either (1) objective medical evidence to confirm the severity of the alleged pain arising from the condition, or (2) that the objectively determined medical condition is of a severity that can be reasonably be expected to give rise to the alleged pain. Foote, 67 F.3d at 1560, citing Mason v. Bowen, 791 F.2d 1460, 1462 (11th Cir. 1986); Landry v. Heckler, 782 F.2d 1551, 1553 (11th Cir. 1986). It should also be noted that in certain situations, pain alone can be disabling, even when its existence is unsupported by objective evidence. Marbury v. Sullivan, 957 F.2d 837, 839 (11th Cir. 1992). See also SSR 96-7p.

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, duration and limiting effects of these symptoms are generally credible. The undersigned concludes that based on the evidence as outlined above, the claimant has the residual functional capacity for less than sedentary work. In reaching this conclusion, the undersigned has also considered the opinion of Dr. Rand and found that it is consistent with the other evidence of record, including her own treatment notes and tests, and is afforded "substantial" or "controlling" weight. See Lewis v. Callahan, 125 F.3d 1436 (11th Cir. 1997); Holley v. Chater, 931 F.Supp. 840 (S.D. Fla. 1996); Edwards v. Sullivan, 927 F.2d 580 (11th Cir. 1991).

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

The claimant has past relevant work as a maintenance worker (DOT code 899.381-010) and bus driver (DOT code 913.463-010), which are both performed at the medium exertional level respectively. The regulations define medium work as lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. A full range of medium work requires standing or walking, off and on, for a total of approximately 6 hours in an 8-hour workday in order to meet the requirements of frequent lifting or carrying objects weighing up to 25 pounds. As in light work, sitting may occur intermittently during the remaining time. Use of the arms and hands is necessary to grasp, hold, and turn objects, as opposed to the finer activities in much sedentary work, which require precision use of the fingers as well as use of the hands and arms.

The considerable lifting required for the full range of medium work usually requires frequent bending-stooping. (Stooping is a type of bending in which a person bends his or her body downward and forward by bending the spine at the waist.) Flexibility of the knees as well as the torso is important for this activity. (Crouching is bending both the legs and spine in order to bend the body downward and forward.) However, there are relatively few occupations in the national economy which require exertion in terms of weights that must be lifted at time (or involve equivalent exertion in pushing and pulling), but are performed primarily in a sitting position, e.g., taxi driver, bus driver, and tank-truck driver (semi-skilled jobs). In most medium jobs, being on one's feet for most of the workday is critical. Being able to do frequent lifting or carrying of objects weighing up to 25 pounds is often more critical than being able to lift up to 50 pounds at a time. Since the claimant's past work exceeds his present functional capacity for less than sedentary work, he is unable to return to this type of employment.

7. The claimant was born on [] and was therefore 38 years of age at the time of his disability onset.

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

9. 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). Considering the claimant's residual

functional capacity and vocational factors, the issue of transferability of skills is not material in this decision. Because the evidence supports a finding that the claimant has had a substantial loss of ability to meet the demands of basic work related activities on a sustained basis, the unskilled sedentary occupational base is significantly eroded and a finding of disability is justified under Social Security Ruling 96-9p.

10. The claimant has been under a "disability," as defined in the Social Security Act, from April 11, 2004 through the date of this decision (20 CFR 404.1520(g)).

DECISION

Based on the Title II application filed on April 13, 2004, the claimant is entitled to a period of disability beginning July 24, 2003 and to disability insurance benefits under Sections 216(i) and 223, respectively, of the Social Security Act.

It is also the decision of the undersigned that based on the Title XVI application filed on March 23, 2004, the claimant has been disabled since July 24, 2003, under section 1614(a) (3) (A) of the Social Security Act, and the claimant's disability has continued through at least the date of this decision.

The Social Security Administration must also determine whether the claimant meets the income and resources and other eligibility requirements for supplemental security income payments, and if the claimant is eligible, the amount and the month(s) for which the claimant will receive payment. The claimant will receive a notice from another office of the Social Security Administration when that office makes those determinations.