



**SOCIAL SECURITY ADMINISTRATION**

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Office of Hearings Operations  
Suite 450  
1441 Main Street  
Springfield, MA 01103-1449

Date: March 18, 2019

[REDACTED]

**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. 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](http://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  
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.

Form HA-L76 (03-2010)

**Suspect Social Security Fraud?**

Please visit <http://oig.ssa.gov/r> or call the Inspector General's Fraud Hotline at 1-800-269-0271 (TTY 1-866-501-2101).

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

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](http://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) 964-5061. Its address is:

Social Security  
70 Bond Street  
Springfield, MA 01104-3402

Michael P. Breton  
Administrative Law Judge

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

cc: Marshall T. Moriarty, Esq.  
Moriarty Law Firm  
34 Mulberry Street  
Springfield, MA 01105

SOCIAL SECURITY ADMINISTRATION  
Office of Hearings Operations

ORDER OF ADMINISTRATIVE LAW JUDGE

IN THE CASE OF

CLAIM FOR

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

Period of Disability and Disability Insurance  
Benefits

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

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

I approve the fee agreement between the claimant and her 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:

Aaron M. Morgan  
Regional Chief Administrative Law Judge  
Suite 565  
10 Causeway Street  
Boston, MA 02222-1001

**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.

*1st Michael P. Breton*

\_\_\_\_\_  
Michael P. Breton  
Administrative Law Judge

\_\_\_\_\_  
March 18, 2019  
Date

SOCIAL SECURITY ADMINISTRATION  
Office of Hearings Operations

DECISION

IN THE CASE OF

CLAIM FOR

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

\_\_\_\_\_  
Period of Disability and Disability Insurance  
Benefits

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

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

JURISDICTION AND PROCEDURAL HISTORY

This case is before the undersigned on a request for hearing dated February 27, 2018 (20 CFR 404.929 *et seq.*).

The claimant appeared and testified at a hearing held on February 6, 2019, in Springfield, Massachusetts. Erin Bailey, an impartial vocational expert, also appeared and testified at the hearing. The claimant is represented by Marshall T. Moriarty, an attorney.

The claimant is alleging disability since July 24, 2016.

If the claimant wishes that written evidence be considered at the hearing, then the claimant must submit or inform the Administrative Law Judge about the evidence no later than five business days before the date of the scheduled hearing (20 CFR 404.935(a) and 416.1435(a)). Pursuant to 20 CFR 404.935(b) and 416.1435(b), if the claimant misses this deadline but submits or informs the Administrative Law Judge about written evidence before the hearing decision is issued, the Administrative Law Judge will accept the evidence if: (1) an action of the Social Security Administration misled the claimant; (2) the claimant had a physical, mental, educational, or linguistic limitation(s) that prevented submitting or informing the Administrative Law Judge about the evidence earlier, or (3) some other unusual, unexpected, or unavoidable circumstance beyond the claimant's control prevented the claimant from submitting or informing the Administrative Law Judge about the evidence earlier.

The claimant submitted or informed the Administrative Law Judge about additional written evidence less than five business days before the scheduled hearing date. Post hearing, the record was held open two weeks to allow the claimant's representative time to submit additional evidence. The undersigned Administrative Law Judge finds that the requirements of 20 CFR 404.935(b) and 416.1435(b) are satisfied and admits this evidence into the record as Exhibit 10F.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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1. The claimant's date last insured is September 30, 2019.
2. The claimant has not engaged in substantial gainful activity since July 24, 2016, the alleged onset date (20 CFR 404.1520(b) and 404.1571 *et seq.*).
3. The claimant has the following severe impairments: residual pain status post right total hip replacement; spine disorder status post surgeries; and left wrist impairment (20 CFR 404.1520(c)).

The above medically determinable impairments significantly limit the ability to perform basic work activities as required by SSR 85-28.

Considering the longitudinal evidence of record, the undersigned finds the claimant's residual pain status post right total hip replacement; spine disorder status post surgeries; and left wrist impairment impose more than minimal limitations.

The undersigned has considered all the claimant's medically determinable impairments in determining her residual functional capacity (discussed further below), as required by the law and regulations.

On July 5, 2016, [REDACTED] M.D., opined that the claimant is doing activity that is probably beyond her physical capabilities. He gave her a note to reflect no repetitive lifting. Her lifting restriction remains at 20 pounds. Dr. [REDACTED] assessed that, over the long term, she might have to seek an alternative occupation. He stated that she will be seen back in October for probable final assessment (Exhibit 8F/4-5).

The claimant has a history of chronic low back pain and has undergone four back surgeries since 2012. She had two discectomies and one L3-L4 fusion in the lumbar spine. She is also status post a total right hip replacement. She originally injured herself at work and has been in chronic pain as a result of this injury. The claimant reports chronic lower back pain, which radiates into her left leg (Exhibits 4F, 5F, 8F/19, and 9F).

[REDACTED] records dated October 11, 2016, indicate the claimant is status post L3-L4 fusion. She had a lateral fusion followed by a posterior fusion at L3, L4. Prior to the arthrodesis, she has had two lumbar discectomies. [REDACTED] assigned the claimant a permanent partial disability of 27 percent to the lumbar spine. He recommended permanent restrictions of no repetitive bending and no lifting over 20 pounds (Exhibit 8F/2).

On April 6, 2016, [REDACTED] M.D., noted that the claimant has had chronic left thumb pain and swelling for the last two years (Exhibits 4F and 5F).

The claimant underwent a consultative examination by [REDACTED] M.D., on September 13, 2017. The straight leg raising tests are positive bilaterally in both the supine and seated position. She could not fully flex her spine. On clinical examination, the claimant alleges complications due to lower back problem, right hip replacement, fibromyalgia, acid reflux, high cholesterol, hypothyroidism, depression, nerve pain, and right hip joint replacement surgery. Dr. [REDACTED]

offered diagnoses of back pain going down both her legs, two disc removed, two fusions LS spine; right hip replacement; fibromyalgia with diffuse pain throughout entire body; and depression (Exhibit 7F).

Consideration has been given to the state agency medical consultants. On October 6, 2017, [REDACTED], M.D., a Disability Determination Service (DDS) staff physician, assessed that the claimant retained the ability to lift and carry 10 pounds frequently and 20 pounds occasionally; sit more than 6 hours on a sustained basis in an 8-hour workday; stand and/or walk about 6 hours in an 8-hour workday; and perform unlimited pushing and pulling. She opined that the claimant could perform occasional stooping, kneeling, crouching, crawling, and climbing of ladders, ropes, and scaffolds (Exhibit 1A). On January 29, 2018, [REDACTED], M.D., a DDS staff physician, affirmed the initial assessment of October 6, 2017, as written (Exhibit 3A).

**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. Specific consideration has been given to Section 1.04 of the Listing of Impairments (20 CFR 404.1520(d), 404.1525 and 404.1526).**

The record does not establish the medical signs, symptoms, laboratory findings or degree of functional limitation required to meet or equal the criteria of any listed impairment and no acceptable medical source designated to make equivalency findings has concluded that the claimant's impairment(s) medically equal a listed impairment.

**5. The claimant has the residual functional capacity to perform light work as defined in 20 CFR 404.1567(b) except the claimant is limited to lifting up to 20 pounds, frequently lifting 10 pounds, and walking and standing 6 of 8 hours. She would need to alternate sitting or standing every 20 minutes. The claimant is limited to no more than occasional climbing, stooping, bending, balancing, twisting, kneeling, and crawling. She would need to avoid any exposure to heights, ladders, and hazards/dangerous machinery. The claimant is limited to no more than occasional gross manipulation with her nondominant hand. The claimant would need to take unscheduled rest breaks and would be off-task 15 to 20 percent of the workday.**

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 404.1529.

At the hearing, the claimant consistently testified regarding her chronic symptoms and limitations. The claimant stated that she was injured at work, and she collected Workers' Compensation benefits. She indicated that she has back pain, and she has difficulty walking, bending, lifting, and walking. The claimant explained that she has problems with her left hand, and surgery has been suggested. She described that she uses a left wrist brace to keep her thumb in place. The claimant explained that she has poor concentration due to pain. She testified that she needs to take breaks, and she gets depression because of her physical condition. The claimant explained that she has problems putting on her shoes and socks. She stated that her friend cooks. The claimant testified that she tried to return to work for four months in 2016. She

described that she worked as a shift supervisor at [REDACTED] and her job involved stocking shelves. The claimant explained that she also tried dog grooming, and she worked at [REDACTED] for eight years. She performed ordering and receiving during her time at [REDACTED]. The claimant testified that she underwent two discectomies at L3-L4 and two fusions at L3-L4. She stated she had one hip replacement surgery. The claimant rated her pain 7-8/10. She described that she lives alone and drives. The claimant testified that she wears a wrist brace on her left hand. She described that she has left hand, wrist and thumb pain.

Despite numerous surgeries (Exhibits 1F and 8F/19), injections, physical therapy (Exhibit 10F), multiple medications, and treatments, the claimant has suffered continued chronic, severe pain. Social Security Ruling 96-3p provides that pain can be a basis for disability if there is an underlying physical condition, which could reasonably be expected to produce the pain alleged. In this case, the objective evidence of record corroborates the severe pain the claimant alleges.

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. The claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are fully consistent with the medical evidence and other evidence in the record for the reasons explained in this decision. The claimant's symptoms are fully consistent with the medical evidence and other evidence in the record. The claimant's subjective complaints are consistent with the evidence. The evidence fully supports the alleged loss of functioning. The claimant has an excellent work history.

As for the opinion evidence, the undersigned gives some weight to the opinion of treating Dr. [REDACTED] (Exhibit 8F). His opinion is supported by his office notes, consistent with the objective evidence of record, and not contradicted by any substantial evidence.

The undersigned gives partial weight to the opinion of consulting [REDACTED] (Exhibit 7F), to the extent it is consistent with the residual functional capacity described herein. The consulting examiner has an understanding of social security disability programs and evidentiary requirements.

The undersigned gives partial weight to the State agency medical consultants' physical assessments of DDS [REDACTED] (Exhibit 1A) and DDS [REDACTED] (Exhibit 3A) because other medical opinions are more consistent with the record as a whole. Furthermore, the State agency consultants did not adequately consider the claimant's subjective complaints.

All medical evidence of record has been carefully reviewed and all opinions contained therein have been weighed.

It is also noted that in reaching these conclusions regarding the severity of the claimant's impairments and the resulting limitation in her functioning, the medical source opinions by state medical examiners have been considered (SSR 96-6p) (Exhibits 1A and 3A). These opinions were relied on in denying the claimant's application at the initial and reconsideration levels. However, there are a number of reasons for not adopting those opinions in full. The DDS



opinions were rendered by consultants who never had the opportunity to examine, or even meet with and question the claimant.

The claimant's presentation and demeanor while testifying at the hearing was quite consistent and persuasive regarding the nature and severity of her impairments; it is quite possible that the DDS opinions would differ had those consultants had the opportunity to observe such testimony. Furthermore, the undersigned has had an opportunity to examine records presented at the hearing level. Finally, the undersigned finds that the DDS opinions conflict with the findings of examining physicians contained in the medical evidence of record regarding the nature and severity of the claimant's medical condition (Social Security Ruling 96-6p).

Based upon a thorough review of all of the medical evidence of record, the undersigned is persuaded that the claimant's impairments could reasonably be expected to produce the symptoms she alleges to the extent that her impairments are so severe as to preclude the performance of all substantial gainful activity. The undersigned finds that the claimant's complaints are reasonably consistent with the medical signs and findings of record and sufficiently credible as "additive" evidence to support a finding of disability.

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

The claimant has past relevant work as a Store Manager (DOT# 185.167-046) (skilled with a SVP of 7 and light/heavy, as performed) and Department Manager/Produce (DOT# 299.137-010) (skilled with a SVP of 7 and medium). The demands of the claimant's past relevant work exceed the residual functional capacity.

According to vocational expert testimony, the claimant acquired transferable work skills from her past work including customer service, record keeping documentation, supervision, scheduling, general clerical skills, and inventory and ordering.

As required by SSR 82-62, this work was substantial gainful activity, was performed long enough for the claimant to achieve average performance, and was performed within the relevant period.

The vocational expert testified that a hypothetical individual, limited as detailed above, could not perform the claimant's past relevant work. The undersigned adopts the testimony of the vocational expert and finds that the claimant cannot perform any of her past relevant work.

**7. The claimant was an individual of advanced age 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. The claimant acquired transferable job skills from her past work (20 CFR 404.1568).**

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According to vocational expert testimony, the claimant acquired transferable work skills from her past work including customer service, record keeping documentation, supervision, scheduling, general clerical skills, and inventory and ordering.

**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).**

If the claimant had the residual functional capacity to perform the full range of light work, considering the claimant's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 202.07. To determine the extent to which the claimant's additional limitations erode the unskilled light 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 July 24, 2016, 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 protectively filed on March 22, 2017, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act since July 24, 2016.

The workers' compensation offset provisions at 20 CFR 404.408 may be applicable.

*/s/ Michael P. Breton*

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Michael P. Breton  
Administrative Law Judge

March 18, 2019

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Date