

Testimony before the Committee on Oversight and Government Reform  
Subcommittee on Energy Policy, Healthcare and Entitlements  
June 27, 2013 Congressional Hearing

Statement of Judge J. E. Sullivan  
U.S. Administrative Law Judge

**Exhibits A – G**

## **EXHIBIT A – Partial sample of Judge's review notes**

This is a copy of the first two pages of the form I used for my adjudication process. One of SSA's senior attorney advisors (who had 30 years of experience in SSA) helped me create this form. It was essential to my work.

Other Judges use different methods, or different forms. This is simply one example of the complexity of the work.

The 1st page shows the 3 different decisions that a Judge must consider in analyzing a disability application (i.e., Favorable, Unfavorable, Partially Favorable). It identifies critical dates that the Judge must know in evaluating the evidence. It also shows the 5 steps of SSA's Sequential Evaluation in the disability process.

The 2d page shows, at the top of the page, a summary of prehearing motions, and missing evidence. The blocked out box in the middle, "Chart 1: Severe Impairments" of this 2d page identifies all of the different medical impairments that the claimant was alleging supported his application for disability. This "laundry list" of medical conditions is fairly common in disability applications. The bottom section identifies different legal analysis that might be relevant.

## JES DECISION WRITING INSTRUCTIONS

Claimant: [REDACTED] Hearing Date: 10/ [REDACTED] /08, 5/ [REDACTED] /09, & 10/ [REDACTED] /09  
(See notes on page 3 herein, for why case has 3 HRNG dates)

Post Hearing Filing \_\_\_\_\_ days to file \_\_\_\_\_

<input type="checkbox"/> <b><u>FAVORABLE</u></b> ____ Meets listing ____ Equals listing ____ GRID directs ____ GRID framework RULE(s): _____ Sec(s): _____	<input type="checkbox"/> <b><u>UNFAVORABLE</u></b> ____ Engaging in SGA ____ No Severe Impairment ____ Can do PRW ____ Can perform sign. # of jobs RULE(s): _____ Sec(s): _____	<input type="checkbox"/> <b><u>PARTIALLY FAVORABLE</u></b> ____ Later Onset: _____ ____ Closed Period: _____ ____ through _____ RULE(s): _____ Sec(s): _____
--	---	---

AOD: [REDACTED] SSI PFD: [REDACTED] DLI: [REDACTED] AGE: 46 EDUC: 12<sup>th</sup>-1981

DLW: 06/ [REDACTED] /99 Stopped Wk Why: I did not like the job.

### **SEQUENTIAL EVALUATION SUMMARY (404.1520):**

**Step 1: Work Activity & SGA (404.1520(4)(i))**

**Step 2: Impairments**

A. See Chart 1 on page 2 (infra)

**Step 3: Meets or Equals a Listing Rule ((404.1520(4)(iii)) Yes \_\_\_ or No \_\_\_**

**Step 3.5: Determining RFC (Assessing All Evidence) ((404.1520(4)(iv))**

A. RFC

1) Use RFC Hypo # \_\_\_\_\_ (RFC Hypo list or VE testimony)

**Step 4: Can CI do PRW? ((404.1520(4)(iv)) Yes \_\_\_ or No \_\_\_**

**Step 5: Adjustment to Other Work or Disabled ((404.1520(4)(v))**

\_\_\_\_ Jobs exist in region/nation  
\_\_\_\_ Claimant's pain/ symptoms not consistent with medical record  
\_\_\_\_\_

\_\_\_\_ No Jobs given RFC  
\_\_\_\_ No Jobs given RFC plus Partial Credibility and/or Pain  
\_\_\_\_ No Jobs given RFC plus Full Credibility and/or Pain

### ATTORNEY OPENING STATEMENT

Pre-hearing Brief: Yes. An OTR was misfiled into the MER. It was discovered on 12/09, and should be found in the E section.

Denied the OTR on 12/09, since MER does not support listing under 5.05 (B) +/- 8.05.

Only 1 new MER since 12/09 (when these notes prepared) is Exhibit 27F.

CI has hx of exaggerated pain behavior, and lying about drinking. Also exaggerates all his dx and problems. In addition, was going to college in 2007. At 12/09 HRNG, I asked Atty to file info to address the following at the next HRNG:

- 1) When did CI stop drinking & start diuretics? - no info filed
- 2) When did CI start HEP C tx? --no info filed
- 3) When did CI start school in 2007, and when did he stop? --no info filed
- 4) What were job duties as a laborer from 6/05-6/06? ---no info filed

#### Chart 1: SEVERE IMPAIRMENTS

Liver Cirrhosis and Ascites, controlled (16F/1)

Chronic Cervical and Lumbar Strain without Evidence of Radiculopathy (7F)

Hx of Left clavicle & left shoulder dislocation (17F/4; 9F/3)

Psoriatic Arthropathy (7F; 25F; 24F/1)

Tobacco abuse, one half PPD and/or chewing ; (7F/1; 24F/23)

Chest Pain (7F)

Chronic Hepatitis C (16/2-3; 19F/84-86).

#### Non-Severe Impairments

Hx of Torn Right Shoulder Rotator Cuff (7F)

Hx of nasal fracture (17F/14)

Hx of HTN (7F/1; 17F/14)

GERD (17F/14)

Hx of Psoriasis, treated with prescription cream (7F; 16F/9)

Benign Follicular Hyperplasia (16F/7)

Hx of Ventral Incisional Hernia, surgically repaired (7F)

Mood D/O (12.04) (6F)

Hx of Alcoholism (23F/1)

#### Step 3: Meets or Equals a Listing ((404.1520(4)(iii)) - If YES, see below

Age \_\_\_\_\_ Educ \_\_\_\_\_ PRW Skill Level \_\_\_\_\_

Special Profile: AU \_\_\_\_\_ No PRW \_\_\_\_\_ Lifetime C \_\_\_\_\_

MENTAL PRT (if applicable) - Use Exhibit 6F11 & see below

ADLS \_mild\_ SOC \_mild\_ CPP \_mild\_ DECOMP \_None\_

"C" CRITERIA (for 12.02, 12.03, 12.04, & 12.06 only ) \_None\_

## **EXHIBIT B - Judge's review notes of the medical evidence (47 Exhibits)**

This is an example of one page of review notes on a case in which the claimant filed over 45 different medical exhibits. I read all of the exhibits.

The claimant did have mental health problems and some physical limitations.

The notes also demonstrate that the claimant is non-compliant with treatment, abusing alcohol, having marital problems, and hoping to get disability benefits so that he support himself after a divorce.

This example also highlights the importance of reading all the evidence, including counseling treatment notes.

7) **Healthcare (TS) (36F & 39F):** On 2/09 a Ms. [redacted] did a one-year follow-up evaluation during a one-hour individual therapy. She noted that the claimant will return to previous individual therapy with Mr. [redacted] (36/8). The 2/09 evaluation was for "internal purposes only." It was signed by both Ms. [redacted] and Mr. [redacted] (39/1, 5). In essence, the claimant was referred to [redacted] Healthcare because of marital problems. The psychological evaluation was based on his self-report. He could not identify a primary complaint other than that his wife drank and complained too much, particularly about his refusal to help with daily household tasks (39/1). His wife is [redacted] years old, and they lived with their [redacted] children (ages [redacted], [redacted] and [redacted]). He reported he was able to support his family. He also reported that they receives government assistance due to his 5-year-olds diagnosis of autism. The claimant was also filing for disability benefits for himself (39/1). He admitted that the claimant's wife had filed a domestic violence petition against them in the past. His parenting style was laid back. He liked to watch movies with his children, see friends, hang out and drink beer. He also enjoyed fishing and watching TV (39/2). He graduated from high school in 19[redacted], and then attended [redacted] for a couple of months to study computers. He dropped out of the program due to family problems. His last job was driving truck for 3 years (39/2). He had a conviction for B[redacted] and E[redacted], and also for T[redacted] with a Motor Vehicle. He had filed for bankruptcy in 2000 (39/3), he denied any current use of alcohol, although he had previously admitted that one of his activities was to hang out and drink beer with his friends (39/3). He was diagnosed with Schizoaffective D/O, Anxiety D/O, and Depressive D/O, with a GAF of [redacted]. He also ~~had~~ *had* a failure to comply with medication (39/4). It was recommended that he be educated about the effects of alcohol in combination with his psychotropic medication (39/4). He was also recommended to pursue both individual and family therapy (39/5).

On 3/27/09 the claimant reported that he'd been doing well, although he still had some anxiety in social situations (36/7). The claimant continued to report anxiety with social situations in April 20[redacted]. He also reported some marital difficulties, especially since his wife complained about his failure to help around the house (36/4-6). On 5/09 the claimant admitted he had been noncompliant with antipsychotic medication. The therapist noted that he did not appear motivated to maintain medication compliance due to feelings of "nothing has worked before." (36/3). On 6/09 the claimant had complaints about his wife's drinking. On 6/09 and 7/09 claimant also talked about the progress of his disability case (36/2).

#### NEW EXHIBITS Filed in 2010!

15) **Counseling Notes (46F):** On 7/09 the claimant reported that his girlfriend and their neighbor had argument. He also reported that he and his girlfriend [redacted] were taking the children camping that weekend. In addition [redacted] testing was performed (no test results provided), and the claimant appeared "significantly more proficient at nonverbal versus verbal skills (46/3-4). On 7/09 the claimant reported that he was thinking of divorcing [redacted] "after he gets his disability money." He also had not been medication compliant (46/2). On 9/09 ~~test~~ and other testing was done (no test results provided) (46/1).

16) **Psychiatric Services (47F):** On 9/09 the claimant was alert, well oriented, and cooperative. He reported however that it did not take much (unspecified) for him to get very upset. He also reported that he was still waiting to hear about his disability request (47/2). On 10/09 Dr. [redacted] diagnosed the claimant with Schizoaffective D/O. He noted that the claimant was "alert, well oriented, and cooperative. Attention and concentration are impaired (no particular limits noted). The claimant reported he was "doing okay" and the medications were "helping." He was not experiencing any side effects. He was waiting to hear from his disability. He was scheduled to return for regular follow-up in 3 months (47/1).

See next page

## **EXHIBIT C: Sample of Judge's review notes (MH and addiction)**

This is an example of one page of review notes on a case in which the claimant was diagnosed as both mentally ill and as an addict.

However, these diagnoses do not automatically mean that the claimant is disabled.

This example highlights the difficulty of the facts and issues in just one disability application. It also demonstrates how much a claimant may truly need help, and yet not meet the proof standard for disability.

This example also demonstrates the importance of reading all the evidence, including hospital records.

6) [REDACTED] Hospital (1, 2, 3, and 15F):

From 2/03-3/03 the claimant was hospitalized for the 1st time at [REDACTED] Hospital for Substance it i  
Nduced Mood D/O, and Poly Substance Dependenc e (1/1). It was noted that he was going through opioid  
withdrawal, and had improved during his hospitalization (1/1). He was referred to the hospital from the [REDACTED]  
County Jail, where he had been talking about killing himself (1/1). The urine drug screen on 2/03 was positive  
for cannabinoids (1/2). "Mainly the treatment that the patient received during his hospitalization is for geek talks  
vocation from a bit withdrawal." There was no evidence of suicide or homicidality (1/2). It was noted that he had  
"a long history of significant substance-abuse addiction." (1/2).

From 10/04-1/05 the claimant was treated for Heroin, Cocaine, and Marijuana Dependence as well  
as Major Depressive D/O after a suicide attempt (2/1; 3/8). The initial dx was "Bipolar D/O" but quickly  
changed to the dxs listed above (3/8). His GAF upon admission is [REDACTED], but increased to [REDACTED] upon discharge on  
1/05 (2/1). He had been referred to the hospital after attempting suicide in jail. He responded well to  
antidepressants and lithium while in the hospital (2/1). Upon discharge his prognosis was good, and he was  
referred to the "[REDACTED] Recovery Center." (2/2).

From 8/07 - 8/07 the claimant was again hospitalized (15/4).

On 8/07 the claimant was admitted under probable cause status from [REDACTED] County. He reported that  
he had "went off my meds for a while. One of my best friends died from a [REDACTED] last week and it sent me  
over the edge." (15/13). The claimant reported that since his hospitalization in 2004-2005, he had not been using  
"as many drugs," but it didn't appear as though [REDACTED] stopped using drugs. He reported that he was still using  
marijuana occasionally, although he'd stopped using heroin and cocaine in 2006 (15/13).

A physical PE on 8/07 showed normal results, despite the claimant self-report of scoliosis and a bulging  
lumbar disc (15/13, 16). It was noted that he was unemployed and had no income, and had a history of "rather  
severe impulsivity and apparently disordered attachments." (15/16). He also had a history of addiction. The  
hospital psychiatrist noted that she would not prescribe oxycodone or Valium, and recommended that someone  
will look on the board of pharmacy site and see how much medication the claimant had been prescribed (15/16).  
She recommended that his PCP prescribe lithium (15/16). She diagnosed claimant with poly substance  
dependence, and Mood D/O NOS (15/16). On 8/07 the Hospital physician also noted that the claimant had been  
obtaining opioid prescriptions after his detoxification hospitalization (2004-2005) which had been less than one  
year prior, and she recommended methadone and pain management while in the hospital (15/12).

On 8/07 a MSE appeared normal. The claimant reported that he was "doing okay in here." (15/10). On  
8/07 the claimant also reported that he had last year's cocaine "needle injection" 6 months ago despite having  
gone through a recent detoxification program in December [REDACTED]. He also had been smoking their [REDACTED] times per  
week since he was 13 years old. [REDACTED] was his "absolute drug of choice." In addition his "heaviest" alcohol  
use was once a week "splitting 1/5 with him and a friend." (15/9). He reported that he had not worked since  
2003, instead getting got money from his family. He also reported that he had not worked for the last 4 years  
because he was "trying real hard to get my SSI. I've done everything they said." Dr. [REDACTED], the psychiatrist,  
told the claimant that he was "too young for SSI at this time and his symptoms didn't indicate that he  
would be permanently disabled. I encouraged him through compliance he would probably be able to  
regain a lot of his function and work again." (15/9-10).

Dr. [REDACTED] was the overall treating psychiatrist during this hospitalization (15F/4). The GAF upon  
admission was [REDACTED] and [REDACTED] upon release. His discharge diagnosis was Polysubstance Dependence and Mood D/O  
NOS (15/4). The claimant admitted that he had not been taking his medication prior to hospitalization, and have  
been smoking marijuana since his friend had died the prior week. He also was "trying to apply for SSI." (15/5).

See next page



## **EXHIBIT D - 5 Examples of secondary gain motivation findings**

These are excerpts from 5 denial decisions that I issued. Each of these cases had conflicting medical evidence which had to be resolved.

The examples show some of the "secondary gain" motivations that stem from poverty cluster problems. A "secondary gain" motivation is a fact or series of facts, not defined as medical condition(s), that may underlie a claimant's motivation for filing a disability application. American citizens living in the vicious cycle of poverty often have secondary gain motivations for seeking disability benefits.

Part of a Judge's meaningful adjudicatory work is to identify and examine this "secondary gain" motivation evidence, and determine whether or not it is relevant in assessing credibility of the claimant's complaints about medical conditions and pain. The Judge must also examine the objective medical evidence to determine whether or not medical providers have truly provided evidence supporting medical disability, or whether the medical providers are simply reflecting the claimant's self-reported complaints, as the claimant seeks disability.

As detailed above, the undersigned concludes that the claimant has physical and mental impairments that impose limitations, but that they are not of disabling severity. In this regard, the claimant testified at the hearing that it is unfair that "other people" get Social Security disability benefits and she does not. She testified that she had worked hard in the past and that she should now be able to get benefits. She did not feel that she should have to go out and get a job earning only \$800.00 a month. Although the claimant impressed the undersigned as a very sympathetic person, the undersigned respectfully finds that the claimant does not seem to understand that her claim is for disability benefits, based on the above-detailed test for disability, and not a claim for an early pension. The claimant's reported complaints cannot be found fully credible, as the record establishes that she avoids medical tests and treatment. In this regard, she has failed to establish a good reason for not having the MRI scan under the circumstances detailed by the examining neurologists. The claimant has also failed to establish a basis for not having the physical therapy and chiropractic treatment recommended by the treating and examining physicians. Although she alleged mental impairments, the claimant also seemed to believe that these conditions would be diminished or cured by being found disabled, as opposed to considering and pursuing prescribed medication and treatment for the same. Further, despite a lengthy delay, she has not started the therapy recommended by the mental health center. She has also adopted the mistaken belief that she should not have to seek other employment despite her age because "other people" she knows are getting disability. As the undersigned explained to the claimant at the hearing, this administrative court cannot control what is being paid to others and can only ensure that the Act and Regulations are appropriately applied in the cases that this administrative court reviews, hears, and decides.

As for the opinion evidence, in the report submitted to the welfare department on September 2, 2008, Dr. R. [REDACTED] expressed the opinion that the claimant was unable to perform any full-time work (Exhibit 34F). The undersigned rejects this opinion on the ultimate issue reserved to the Commissioner (Social Security Ruling 96-5p) submitted by this treating source (Social Security Ruling 96-2p). It is respectfully noted that the reports from Dr. R. [REDACTED] dealing with treatment since March 2008 do not contain objective findings to support her opinion, and her opinion is

In light of the objective findings detailed above, the undersigned respectfully finds that the claimant has exaggerated the nature and extent of her impairments and that her complaints of disabling pain and functional limitations are not fully credible. As detailed above, the record fails to establish a basis for the claimant's alleged visual problems associated with her headaches or any memory difficulties secondary to prescribed medication, Topamax. With regard to the latter complaint, the claimant reported to Dr. C [REDACTED] on July [REDACTED], that the memory problem was a residual of the meningitis, with this complaint made prior to Dr. C [REDACTED] prescribing T [REDACTED] (Exhibit 2F). The undersigned also respectfully questions the claimant's failure from August [REDACTED] through November [REDACTED] to contact the new doctor at the headache center regarding the increase in her headache frequency since the change in medication in August [REDACTED]. It does not seem reasonable for an individual to wait as long as alleged by the claimant to report the degree of increased symptoms present since August [REDACTED] as alleged by the claimant.

The claimant's reported activities are also inconsistent with the degree of alleged pain and functional limitations. The claimant has been divorced twice and she was married for the third time in 2007. She has three minor children, ages [REDACTED], [REDACTED], and [REDACTED]. She testified that her activities include getting the children up and off to school, cooking a couple of times per week, doing household chores and laundry, and caring for two dogs and one cat. She has a current driver's license and drives to various locations. She testified that her husband works full-time as well as overtime, and that he is away from home close to 60 hours per week. The claimant testified that she started working on a part-time basis after her marriage in 2007. She also testified that she has no family to help care for her minor children if she returned to full time work. The father of her two youngest children resists paying child support, and at the time of the hearing he was serving jail time for failure to meet his parental obligation. She and her third husband have lots of debts, and "struggle each month" to make ends meet financially (November [REDACTED] testimony).

The undersigned respectfully finds that the claimant's lack of any help in caring for her children if she returned to work, as well as her family's financial situation provides her with a significant secondary gain motivation with regard to her complaints. She testified that she receives no child support for her 15-year-old because she is trying to live with her father. As noted above, she receives no child support for the other two children because their father is in jail for contempt for failing to pay child support. He currently owes \$3000 in back support. She also admitted that she and her husband struggle each month financially. While the claimant's financial and child care struggles are understandable, these challenges do not support a disability finding.

Considering the overall record, the undersigned finds that the claimant has failed to establish any 12 month period since her alleged onset date during which her combination of impairments would preclude her performance of the above-detailed range of medium work on a regular and continuing basis, eight hours a day for five days per week (Social Security Ruling 96-8p).

The record also supports a finding that the claimant has a secondary gain motivation with regard to his alleged complaints. He has a poor earnings record and his primary support while growing up was the disability payments received by his mother. The claimant lived rent-free with his former boyfriend, with the boyfriend receiving disability payments and the claimant receiving welfare payments. The claimant currently rents a room and he receives welfare payments and food stamps. He also testified that he owes \$8000 for a 2007 car purchase, even though the car was voluntarily repossessed for lack of payment three months after purchase. He also owes debts on five credit cards, but could not remember at the December [REDACTED] hearing how much he owed on these cards. The undersigned respectfully finds that the claimant has shown little motivation to seek employment, and appears to never have had a role model in his life who has worked.

As for the opinion evidence, the undersigned's finding that the claimant is capable of performing the mental demands of the range of work detailed above is consistent with the assessment submitted by the consultative evaluator (Exhibit 7F) and by the state agency psychological consultant (Exhibit 8F).

As detailed above, various evaluators have reported different GAF scores for the claimant during the period in question. Regarding GAF scores in general, the undersigned accords them relatively little weight or reliability in determining a claimant's mental status or functioning over any period of twelve or more continuous months. These scores are essentially based completely on the claimant's subjective complaints and other statements at that particular point in time, which the evaluator rarely questions. This body of uncorroborated subjective statements is then subjectively processed through the evaluator's own individual mindset and interpretations regarding mental impairments, symptoms, severity and other factors. The undersigned believes that such a process can well lead to inaccuracies and inconsistencies. Indeed, the undersigned has seen many instances in which a claimant has received significantly different GAF scores from different evaluators within a short period of time. Thus, these scores are accorded only limited weight.

The undersigned respectfully rejects the assessment submitted by Psychologist G [REDACTED], the one-time evaluator, on November 1 [REDACTED]. This evaluator's only contact with the claimant was a one-hour clinical interview and an apparent reading of the treatment records of the claimant's treating source who had only been treating him for approximately two months. As noted above, the claimant submitted no treatment records to the undersigned from this new treating source. Further, as detailed above, the opinions of Psychologist G [REDACTED] are found to be based primarily on the claimant's detailed subjective complaints, with the limited mental status examination findings reported by this source failing to support the opinion of Psychologist G [REDACTED]. To the extent that Psychologist G [REDACTED] opinions conflict with the above-detailed residual functional capacity finding, they are rejected as being based primarily on the claimant's subjective complaints and not supported by the above-detailed longitudinal record. Similarly, the opinion

In light of the objective findings detailed above, the undersigned respectfully finds that the claimant has exaggerated the nature and extent of her impairments present during the period in question and that her complaints of disabling pain and functional limitations are not fully credible. The claimant required no inpatient treatment during the period in question and she received limited outpatient treatment with improvement reported with the treatment at the pain clinic and the claimant not beginning treatment at the mental health center until July [REDACTED], after the filing of her current application. As detailed above, prior to her date last insured the claimant's mental impairments were not severe, with her symptoms related to situational stressors including family stress and financial problems. Further, as detailed above, the records from the claimant's primary care physician fail to support her allegation that she had generalized body pain at all times after her accident in [REDACTED].

The claimant's activities during the period in question, as detailed above, are also inconsistent with her complaints of disabling pain and functional limitations. Her activities included caring for three minor children, with two of the children born after the claimant's alleged October [REDACTED] onset date of disability, with the youngest child requiring additional care because of the sensory disorder. The claimant reported that the youngest child was very active and demanded a lot of her attention, which was sometimes exhausting for her (Exhibit 10F/8, 16-18). The claimant had also reported both family and financial stressors to her medical providers (Exhibit 10F/16-18). It is noteworthy that she filed for social security around the same time she wanted to be considered for lap band surgery (Exhibit 12F/7). She testified at the October [REDACTED] hearing that she had accrued at least \$10,000 in new debt since her [REDACTED] bankruptcy, with \$3000 of that debt accrued since December [REDACTED]. Although the claimant testified that she no longer was using E-Bay trading as an "escape" from family stressors, she still owed the large debt, which could not be discharged in a new bankruptcy at this time. Her provider reported that she had difficulty accepting that she could not buy everything she wanted for her children (Exhibit 10F/3). The undersigned respectfully finds that the claimant clearly exaggerated her symptoms at the October [REDACTED] hearing, using crutches to ambulate and crying throughout the hearing, with no objective basis established for the need for the crutches. Given her family stressors and financial difficulties, as detailed above, she has a significant secondary gain motivation to exaggerate her symptoms. While the undersigned understands the claimant is under financial stressors and that she may at times find the home care of her three minor children fatiguing, these challenges do not support a disability finding.

As for the opinion evidence, the undersigned's finding that the claimant was capable of performing the above-detailed range of light work during the period in question is consistent with the assessment submitted by the state agency medical consultant on August 26, 2008 (Exhibit 7F). The undersigned's finding is also consistent with the opinion of Dr. [REDACTED] in the assessment dated February [REDACTED], that the claimant's back and neck pain precluded her performance of work of "moderate intensity" (Exhibit 5F). Although Dr. [REDACTED] reported in a

The above-detailed longitudinal record establishes that the claimant's complaints of depression and anxiety are related primarily to the separation and subsequent divorce from her husband. She has also reported increasing her alcohol consumption after the separation. The claimant's treatment at the mental health center did not focus on her alcohol dependence until April 2008 and the claimant subsequently underwent detoxification after her second driving under the influence arrest. She has denied any alcohol intake since the detoxification. Contrary to the claimant's assertions, she has not been diagnosed by the treating source at the mental health center as having a bipolar disorder, and this treating source has also not diagnosed the claimant as having agoraphobia. As detailed above, the undersigned concludes that the claimant's mental impairments result in moderate difficulties in maintaining social functioning. Consistent with the opinion of the state agency psychological consultants (Exhibits 6F and 10F), the undersigned finds that these moderate difficulties have been adequately accommodated by limiting the claimant to the performance of jobs in a low stress/demand work environment with only occasional interaction with the public and coworkers. The undersigned's findings regarding the claimant's mental limitations are also consistent with the above-detailed GAF ratings reported by the treating psychiatrist, with these ratings consistent with a finding that her impairments are no more than of a moderate level of severity.

In light of the above-detailed objective findings, the undersigned respectfully finds that the claimant has exaggerated the nature and extent of her impairments and that her complaints of disabling pain and functional limitations are not fully credible. As detailed above, the claimant has received only conservative treatment for her physical and mental impairments, with her only inpatient treatment in October 2008 when she had detoxification. The claimant has been reported to have improved with the treatment at the mental health center and at the pain clinic. The reports from these treating sources fail to support her complaints of medication side effects. The claimant's activities during the period in question, as detailed above, are also inconsistent with her complaints of disabling pain and functional limitations. She continued to work on a farm and care for nine or ten dogs. The claimant is also respectfully found to have a secondary gain motivation with regard to her complaints, particularly since her divorce. In this regard, she previously lived with her disabled husband and relied on his supplemental security income prior to their separation. Despite her complaints of longstanding physical and mental problems, she did not file for benefits until after the separation and she is found to have exaggerated the nature and extent of her limitations in part based on her financial concerns.

Based on all the foregoing, the undersigned finds that the claimant, since filing her title XVI application on April 26, [REDACTED], has retained the ability to perform the demands of the above-detailed range of light work on a regular and continuing basis, eight hours a day for five days per week (Social Security Ruling 96-8p).

## **EXHIBIT E - Hearing Record Minutes**

**(One Hour and 16 minutes)**

This is an example of a short hearing. It took 1 hour and 16 minutes. It included the following:

1. Opening the record
2. Admitting exhibits
3. Stipulating to the Vocational Expert's (VE) qualifications
4. Granting the claimant's motion to amend the disability onset date
5. The direct examination of the claimant by the claimant's attorney
6. The Judge's questioning of the claimant
7. The Judge's questioning of the VE  
[Note: The attorney chose not to question the VE]
8. Closing the record

### Comments:

This was a short hearing because so few witnesses were presented, and the attorney did not question the VE. In addition, the claimant was able to testify without requesting a break (e.g., crying, coughing, need to use the bathroom, etc.).

The hearing could have easily taken more if any of the following (not inclusive) had occurred:

1. The attorney had questioned the VE
2. The attorney had more motions
3. The attorney had recalled the claimant for rebuttal
4. The claimant had needed an interpreter
5. The claimant had presented other witnesses (e.g., spouse, parent, pastor, adult child, friend, etc.)
6. The claimant had presented his own expert testimony (doctor, therapist, chiropractor, psychiatrist, etc.)
7. The Judge had called any medical expert(s) to testify

<b>Description</b>	SSN : ████████ Last Name : ██████ First Name : ██████ Office Code : R95 Judge : Sullivan, J.E. Rep : K██████, C██████ VE : O██████, Larry ██████ Witnesse(s) : Hearing Site: ██████████ - ██████████ Hearing Type : Disability Hearing Reporter : R██████ P██████ Number: ████████	
<b>Date</b>	2/██/2010	<b>Location</b> : ██████████
<b>Time</b>	<b>Speaker</b>	<b>Note</b>
8:11:41 AM		Session started at 8:11:41 AM on 2/10/2010
8:11:52 AM		Recorder started at 8:11:52 AM on 2/10/2010
8:11:54 AM	CHR	System Test & Identification
8:12:38 AM		Recorder stopped at 8:12:38 AM on 2/10/2010
8:56:09 AM		Recorder started at 8:56:09 AM on 2/10/2010
8:56:09 AM	ALJ	On the Record
8:56:15 AM	ALJ	Opening Statement
8:56:39 AM		Identification of participants, clmt, Rep, VE Ostrowski, HR
8:57:08 AM	ALJ	Exhibits -
8:57:12 AM		1-8A, 1-19B, 1-5D, 1-21E, 1-33F admitted
8:57:35 AM		NEW - 18B - 1696, letter 19B - letter from Rep
8:58:38 AM		Rep stipulates to VE qualifications
8:58:58 AM	Vocational Expert	work history 3E - minimal information saw mill,
9:00:36 AM	ALJ	pre hearing memo - 20E, 2 prior denials, first denied 07/18/06, 1B and 2B, second denied 06/12/07, 01/22/08 third application,
9:02:21 AM	Representative	Mr. ██████ looked to reopen because of progression of problems
9:03:03 AM		not have a request to reopen - just her consideration
9:03:33 AM	ALJ	amend onset date - 06/██/07 last denial - Title 16,
9:04:10 AM	Representative	motion to amend onset given to Rep -
9:05:07 AM	ALJ	20E, - motion for on the record decision was denied
9:05:46 AM		Recorder stopped at 9:05:46 AM on 2/10/2010



<u>9:05:48 AM</u>		off record for Rep to fill out motion to amend onset
<u>9:09:48 AM</u>		Recorder started at 9:09:48 AM on 2/10/2010
<u>9:09:48 AM</u>	ALJ	recess given for above
<u>9:10:26 AM</u>	ALJ	Additional Evidence -
<u>9:10:29 AM</u>		Amend onset date to 06/07 - 20B admitted - motion granted
<u>9:11:13 AM</u>		record complete
<u>9:11:20 AM</u>	ALJ	Witnesses Sworn
<u>9:11:47 AM</u>		Clmt
<u>9:11:53 AM</u>	ALJ	[REDACTED]
<u>9:12:01 AM</u>		name
<u>9:12:04 AM</u>	Representative	Questions Claimant
<u>9:12:18 AM</u>	Claimant	Testimony - Work -
<u>9:12:22 AM</u>		lumber stacker- Saw Mill - stacked lumber 6' - 10', and ran a back hoe, 04/03 - not even full two months, PT -
<u>9:14:22 AM</u>		[REDACTED] Factory - 2002 - 2003 - 11/02 - 01/03 quit, wing cutter, full time -
<u>9:15:34 AM</u>		[REDACTED] Construction - 06/- 07/02, helping hand, grabbed tools for people, worked as needed - 2 - 3 days per week
<u>9:17:51 AM</u>		now work since Saw Mill
<u>9:18:01 AM</u>		not remember before [REDACTED] construction
<u>9:18:13 AM</u>	Claimant	Impairments -
<u>9:18:45 AM</u>		times need to exclude his self from crowds,
<u>9:19:03 AM</u>	Claimant	Activities of Daily Living -
<u>9:19:07 AM</u>		gets up - makes coffe - walks upstairs, has just divorced less than a month ago - she lives in the same building - upstairs
<u>9:19:38 AM</u>		he picks up his son, - puts him to sleep
<u>9:19:48 AM</u>		drnks coffee, plays with son most of the day - has him 7:00 - 2:35 pm
<u>9:20:36 AM</u>		after son leaves - he sleeps for while and contacts his gfriend to come over
<u>9:21:17 AM</u>		hobby - fishing
<u>9:21:21 AM</u>		naps 1 - 2 times per day because of RX

<u>9:21:38 AM</u>		bed time - 8:00 or 9:00 - up 2 - 3 times, takes hour or two to go back to sleep, has nightmares - nightmares every night
<u>9:22:30 AM</u>		voices get to him and plays with son to get it out of his head
<u>9:22:47 AM</u>		playing with son helps
<u>9:23:02 AM</u>		
<u>9:23:28 AM</u>		two other jobs sited in review
<u>9:23:36 AM</u>		cut trees
<u>9:23:39 AM</u>		and stretched fiberglass on a roller
<u>9:23:56 AM</u>		labor - string fiber optics -
<u>9:24:21 AM</u>		Questions Claimant
<u>9:24:26 AM</u>		
<u>9:24:44 AM</u>		
<u>9:25:01 AM</u>		
<u>9:25:23 AM</u>	Claimant	Testimony - Work -
<u>9:25:25 AM</u>		cut trees - summer job 2000, 05 - 07/00 - used chain saw - cut limbs off - full time -
<u>9:26:58 AM</u>		lumber stacker - made excuses to go home - was suppose to be full time -
<u>9:27:32 AM</u>		stretching fiber glass - 18 yrs old - 1999 or 2000, came off roller and had to stretch the fiber and pull it to red line, used for furnaces - worked in factory - team work - PT job - temporary work, sometimes 8 hours per day - mostly 4 hours - less than a month and half worked - stand - not heavy material
<u>9:30:11 AM</u>		labor - fiber optics - clmt never stringed fiber optics
<u>9:30:52 AM</u>		never worked under the table
<u>9:31:02 AM</u>		pays child support \$50.00 per month
<u>9:31:13 AM</u>	ALJ	Questions Claimant
<u>9:31:16 AM</u>		2 sons, 6 yrs - sees once in a great while - no child support
<u>9:31:39 AM</u>		2 yr old son - child support pays \$50.00, mother helping him
<u>9:32:13 AM</u>		family law judge waiting to see about his disability hearing -

<u>9:33:17 AM</u>		has a gfriend - her sister lives in his apartmen tbuilding - he has 2 rooms in his apt -
<u>9:34:31 AM</u>		with his gfriend he watches movies, rents DVD's,
<u>9:35:07 AM</u>		x-wife works - she is volunteer at ██████ Hospital - on ██████ works program
<u>9:35:38 AM</u>		\$200.00 per month food stamps, and medical card receives from state
<u>9:36:07 AM</u>		parents give him money - father has Comp case - neck broke on the job, he has comp benefits,
<u>9:36:45 AM</u>		mother - goes to auctions and EBay sells stuff
<u>9:37:17 AM</u>		if he worked not know who would take care of his son -
<u>9:37:50 AM</u>		son is 2 yrs old, he hates to be around anybody, ██████ and another child come over
<u>9:38:42 AM</u>		He blows off on people
<u>9:38:53 AM</u>		stopped taking RX and uses different drugs -
<u>9:39:19 AM</u>		if stayed on RX - and stopped using illegal drugs he would be able to work
<u>9:39:53 AM</u>		Clmt 27 yrs old, he wants him son to know that he is for them no matter what
<u>9:40:38 AM</u>		He has stayed on RX - and mental health tratment -
<u>9:41:00 AM</u>		no illegal drugs in system - smokes marijuna occasionally once every month or couple months - not every day
<u>9:41:57 AM</u>		clmt not drink
<u>9:42:22 AM</u>	Claimant	Medical Treatments -
<u>9:42:29 AM</u>		Dr. B ██████ - 22F/3, 04/█████ - no follow up for substance abuse treatment,
<u>9:43:14 AM</u>		█████ Hospital 1F, 2F, 15F - 08/█████ hospitalization - mental and substance abuse problem 15F/ 5 and 6 - clmt refused 14 day program
<u>9:44:17 AM</u>		since 20█████ - no tratment
<u>9:44:34 AM</u>		V ██████ H ██████ Care 33F - no substance abuse treatment
<u>9:45:21 AM</u>		clmt has competed MICA 3 times - why he was denied - ██████ Hospital - man that ran it used illegal drugs and had Hepitius C - he laughed in our faces the way he ran the group -
<u>9:47:12 AM</u>		General Lab Report shown to ALJ

<u>9:47:33 AM</u>	ALJ	Additional Evidence -
<u>9:48:26 AM</u>		Hepatitis C - Lab Report - 34F admitted
<u>9:48:45 AM</u>	ALJ	Questions Claimant
<u>9:48:50 AM</u>		no treatment for Hep C as yet - not have medical card
<u>9:49:38 AM</u>		prior records - drug screen test in order to see son - was refused - olders sons mother
<u>9:50:23 AM</u>		2 months ago had random blood test - for levels of RX -
<u>9:51:01 AM</u>		██████ Health Care - RX - was seeing a psychiatrist one on one - but not there any more - 33F - 02/2009 -RX - clmt says longer than that
<u>9:52:12 AM</u>		last therapist - T██████ H██████ - drug counseling - 2007
<u>9:52:25 AM</u>		last one J██████ - not work there now - ████████ 2009
<u>9:53:30 AM</u>		talked about vocational with his therapist - inter racial means he would be with minorities
<u>9:55:00 AM</u>	ALJ	Witnesses Sworn
<u>9:55:03 AM</u>		VE
<u>9:55:13 AM</u>	ALJ	Questions VE O██████
<u>9:55:22 AM</u>	Vocational Expert	Work History -
<u>9:55:28 AM</u>		Region - 20% of jobs in WV
<u>9:56:10 AM</u>		cutting trees - chain saw heavy - unskilled
<u>9:56:20 AM</u>		fiber glass factory - medium unskilled
<u>9:56:32 AM</u>		chicken factory - light - unskilled
<u>9:56:42 AM</u>		saw mill - stacker heavy - unskilled
<u>9:56:52 AM</u>		back hoe - medium - semi skilled - did the job 3 months to a year - to develop the skills for the job - no education requirement
<u>9:57:56 AM</u>	ALJ	Questions Claimant
<u>9:58:06 AM</u>		5D - worked 2008 - SGA earned - 2nd quarter - ████████ ██████ Corp - worked 2 and 4th quarter, clmt not remember that - not work 2008 at all -
<u>9:59:39 AM</u>	ALJ	Questions VE
<u>9:59:55 AM</u>		lumber work - stacker
<u>10:00:24</u>	ALJ	Hypothetical - 1

<u>AM</u>		
<u>10:00:32</u> <u>AM</u>		as clmt
<u>10:00:53</u> <u>AM</u>		no exertional limits
<u>10:01:06</u> <u>AM</u>		simple - 1- 3 step
<u>10:01:13</u> <u>AM</u>		R & R
<u>10:01:16</u> <u>AM</u>		low stress
<u>10:01:25</u> <u>AM</u>		occasional interaction with others, cos, public, supers
<u>10:01:43</u> <u>AM</u>		any passw rok
<u>10:01:49</u> <u>AM</u>	Vocational Expert	back tender, chain , lumber stacker - poultry worker
<u>10:02:11</u> <u>AM</u>	Vocational Expert	kitchen helper - 303R - 381,127N - Dot 318687010 med
<u>10:02:59</u> <u>AM</u>		equipment cleaner 129 R - 20 200, 688N - medium
<u>10:03:33</u> <u>AM</u>		hand packager - 154R - 242, 081N - dot 920587 018 med
<u>10:04:00</u> <u>AM</u>	ALJ	Hypothetical - 2
<u>10:04:02</u> <u>AM</u>		as clmt
<u>10:04:12</u> <u>AM</u>		add to one
<u>10:04:15</u> <u>AM</u>		no interaction with public
<u>10:04:23</u> <u>AM</u>		no contact with food products
<u>10:04:45</u> <u>AM</u>		pass work still exist
<u>10:04:54</u> <u>AM</u>	Vocational Expert	rules out poultry boner - other 3 still exist

<u>10:05:25</u> <u>AM</u>		rules out kitchen helper - diminish - hand packer numbers - 50%
<u>10:05:51</u> <u>AM</u>		equipment cleaner still exists
<u>10:06:06</u> <u>AM</u>	Vocational Expert	commercial cleaner 1436R - 1M , 288,619N - dot - 381687018 - medium
<u>10:06:56</u> <u>AM</u>	ALJ	Hypothetical - 3
<u>10:06:59</u> <u>AM</u>		assume 2
<u>10:07:15</u> <u>AM</u>		preference for isolated work - cos can be around -
<u>10:07:45</u> <u>AM</u>		pass worker still exist
<u>10:07:53</u> <u>AM</u>	Vocational Expert	back tender eliminated - others ok
<u>10:08:10</u> <u>AM</u>		hand packager - equipment cleaner and com cleaner appropriate
<u>10:09:04</u> <u>AM</u>	ALJ	Hypothetical - 4
<u>10:09:07</u> <u>AM</u>		all testimony is credible - takes 2 naps per day, hears voices, can't be around crowds and not able to work full time, and supported by medical
<u>10:09:57</u> <u>AM</u>	Vocational Expert	no jobs
<u>10:10:06</u> <u>AM</u>	Representative	no questions
<u>10:10:13</u> <u>AM</u>	ALJ	Questions VE
<u>10:10:16</u> <u>AM</u>		DOT consistent
<u>10:10:27</u> <u>AM</u>	ALJ	Post Hearing Instructions
<u>10:10:30</u> <u>AM</u>		record ready for closure
<u>10:12:31</u> <u>AM</u>	ALJ	Hearing Closed

## **EXHIBIT F – Two Disability Cases**

These are two examples of SSA disability cases that were reviewed by two different SSA Judges. The first Judge reviewed the case under a meaningful adjudication standard. The second Judge reviewed the case under SSA management's "making goal" standard. All the case facts have been summarized. Certain dates and facts have been changed to protect each claimant's privacy.

### **Fact Summary - Claimant A**

Basic Summary: Claimant A claims disability on the basis that she cannot be around people. Claimant A files very little medical evidence. She appears to have a drinking problem. Although Claimant A states she cannot be around people, when the first Judge questions her at the 2/20/10 hearing, Claimant A admits that she enjoys traveling. She has recently traveled for vacations to both Maine and France.

Application: On 3/26/07 Claimant A filed for disability (T2 and T16) for the first time, alleging disability date of 5/15/06 (the date Claimant A last reported full time earnings). Claimant A had an odd historic pattern of work, with recent history showing no work in 1993-1996, PT work in 1997, 2003, and no work since 2006, etc. She alleged anemia and depression as disabling. She asserted she could not be out in public. Her primary medical support was a social worker, who had been providing some counseling sessions, and who believed that the claimant had stopped all alcohol abuse (based on the claimant's self-report).

Education & Background: Claimant A had attended a 4 year college and earned a degree. She also had attended two years of graduate school, and had obtained a Masters in English in 1995. She was recently widowed, and obese (5'1 and 178 pounds). Claimant A had married in 1993. She and her husband lived in Connecticut. Her husband had cancer and she had spent a great deal of time caring for him (without the support of family members). After her husband died (1998), Claimant A moved to WV to be with her family of origin (Claimant A had no children of her own).

Three Scheduled Hearings: Claimant A's appeal was assigned to a Judge on 12/9/08. The 1st hearing was held on 3/20/09. Claimant A appeared *pro se*, and requested a continuance to get medical evidence and to try and obtain counsel. The request was granted. Although Claimant A agreed to provide the name(s) of psychiatrists she had seen in Connecticut, she failed to do so. She also failed to obtain an attorney. In May 2009 the Judge directed office staff to schedule a psychiatric CE. The office failed to do so (despite request being made electronically). The office staff then lost track of the file. The file was rediscovered as an "aging" file, and a 2d hearing was set in early January 2010. The claimant then obtained an attorney. Both asked for a continuance, with the claimant asserting that she would be out of town on the January 2010

hearing date. The continuance was granted. The 3d hearing was held on 2/20/10. At that time, the claimant testified on her own behalf, and also answered the court's inquiries.

2/20/10 Hearing (1<sup>st</sup> Testimonial Hearing): On 2/20/10 the court noted that at the June 2007 DDS psychological exam, Claimant A had denied any alcohol/drug use, and also reported no history of inpatient mental health treatment. Claimant A also reported being treated for depression since 1998 with medication and/or outpatient counseling. Claimant A had failed to file any MH records from her PCP, Connecticut psychiatrists, or anyone else prior to 2007. Claimant A also admitted to the court (and some of her medical providers) that she self-medicated with alcohol, but didn't perceive it to be a problem for her. She denied any knowledge that alcohol abuse would impact the efficacy of her MH meds or treatment.

Claimant A testified that she was 43 years old, a college graduate (1989) with a Masters in English (1993). She asserted that she could not go out in public or she would "get sick." She felt sickest when she was working. She had felt like she had been steadily "losing" herself. When she first moved to West Virginia, she had lived with her brother, but since 2000 she had lived alone in her own apartment.

Claimant A worked to support herself through May 2006, which included teaching college classes. After May 2006 she found odd jobs (e.g., child care, tutorial assistance to small children, etc.) to supplement welfare and her family's financial support. Claimant A denied her counselor's report that she continued to provide tutorial assistance to various middle and high school students.

Claimant A's brother moved from WV in 2005. Claimant A had no other family in WV. Her nearest family was in Maine. She tried to travel to visit her family in Maine twice a year. Typically, she would fly alone from WV to Reagan International, change planes, and fly to Maine. In 2009 she traveled alone to Maine twice to spend time with family. She usually stayed about eight days per trip.

In addition to the two Maine trips, Claimant A had also traveled alone in 2009 to Paris, France, where she stayed two weeks to visit with her cousin. Claimant A does not speak French. She noted that her cousin had paid for the trip. Although Claimant A denied alcohol use to her counselor, she admitted at the 2/20/10 hearing that she continued to drink alcohol "occasionally" (e.g., every two weeks or so).

On 2/20/10 the VE found that Claimant A had previously engaged in highly skilled labor. With non-exertional (i.e., mental) limitations and some physical limits (as recommended by DDS medical and giving all benefit of doubt to claimant's allegations), Claimant A could not return to her former occupations, but she could engage in many different light, unskilled positions.



Court ordered Medical Expert: At the conclusion of the 2/20/10 hearing, the Judge and Claimant A's attorney counsel agreed that a supplemental hearing with a Board Certified psychiatrist, who specialized in drug and alcohol issues, would be very helpful. The Judge then sent a follow-up letter to the attorney, with a summary of the testimonial evidence (including international travel activity), which stated in part:

As you know, [Claimant A] has been diagnosed by various psychiatrists who share rotational duties at the low cost Health Clinic where she receives basic treatment. At the supplemental hearing Dr. C\*\*\*\*\* will be asked to review the medical records and provide 1) a diagnosis of mental health condition(s); 2) an opinion about [Claimant A's] functional abilities; and 3) optimal treatment options she might consider. Dr. C\*\*\* will also be asked to discuss the impact of [Claimant A's] alcohol consumption on her mental health treatment.

Removal of Case from Judge: A few days after the 2/20/10 hearing, the SSA management removed the case was from the Judge. The case was deemed an "aged" case that needed to be expedited. The case was re-assigned to a second Judge in the office who always "made goal."

The first Judge offered give the second Judge all the background information, as well as all the Judge's work review notes. The second Judge declined to accept the notes or discuss the facts of the case. The second Judge then cancelled the first Judge's order for a Supplemental Hearing and an ME.

Nine days later, the second Judge signed and issued a Fully Favorable decision (i.e., a "pay" decision). This award of disability benefits dated back to the May 2006 (i.e., before the Maine and Paris trips had occurred). The "pay" decision found that Claimant A was fully credible in her allegations of pain and mental limits, based on a combination of the reports provided by the social worker and the DDS psychologist. There was no discussion in the decision of the claimant's travels, alcohol abuse or secondary gain motivation in the "pay" decision.

This "pay" decision helped the office "make goal" for the month.

## **Fact Summary - Claimant B:**

Basic Summary: Claimant B claims disability on the basis of a left shoulder injury. However, Claimant B's medical evidence shows a 93% recovery in the left shoulder after surgery. After filing for disability, Claimant B also has neck surgery. The surgeon reports success with the surgery. Claimant B received unemployment compensation for part of the alleged disability period. Claimant B appears to have a drug addiction problem, and financial debt. Claimant B has reported to medical providers that after his surgery, he has worked as a truck driver, and enjoyed his hobbies of hunting and fishing.

Application: On 4/19/07 Claimant B filed for disability (T2 and T16) for the first time, alleging an AOD of 8/14/06 (the date Claimant B last reported working, although last earnings reported was in 2005). Claimant B had an intermittent pattern of work, with FT work only in 1993-2001, 2003, and 2005. He had broken his left shoulder in the past, and reported it as disabling. Claimant B also alleges special education history in school, although his adult work included skilled labor and he had a GED.

Education & Background: Claimant B was married with 3 children (ages 22, 15, and 10). In 2009 his 22-year-old daughter, her boyfriend, the boyfriend's 4-year-old child were living with the claimant, his wife, and their 2 children. The claimant had worked as a truck driver.

Four Scheduled Hearings: Claimant B's appeal was assigned to a Judge on 9/25/08. The case was set at a remote mountain hearing site (a hotel) with no video or telephone access in the hotel conference room. The 1st hearing was set on 12/10/08. Claimant B was *pro se*. On the day of the hearing, the SSA office called the hotel desk clerk, and left a message for the Judge, reporting that Claimant B had called the office and was requesting a continuance because a snow storm in that mountain region prevented him from appearing. The continuance was granted.

The 2d hearing was held on 5/8/09, but no testimony or evidence was presented. At that time, Claimant B appeared *pro se* and requested a continuance to get medical evidence and try to obtain counsel. The continuance was granted.

Claimant B obtained an attorney, who filed medical evidence stating that Claimant B was scheduled for new surgery in August 2009. The attorney requests that the 3d hearing be set after August to allow recovery from surgery. The 3d hearing was set for 9/3/09. Claimant B's attorney objects and requests a continuance, stating that there is insufficient time allowed for Claimant B's release from the hospital and for post-surgical recovery notes to be filed. The continuance is granted.

The 4<sup>th</sup> hearing was set for 1/6/10 in the same hotel (i.e., near Claimant B's mountain home), but both Claimant B and his attorney call the SSA office the day of the hearing and request a new hearing date. Neither can come to the hearing because snow and weather conditions prevent travel to the hotel. The continuance is granted.

General Medical Evidence: In 2006 a former employer filed a letter challenging the Claimant B's workers comp claim, and noted that Claimant B had been arrested in June 2006 for two felony counts of distribution of marijuana. The employer also noted that the Claimant B reported injuring his left shoulder immediately before quitting his job in August 2006. There were third-party reports that the claimant had actually injured his shoulder during a family fight the night before he quit. The worker's comp claim was litigated, and the claim was ultimately allowed.

Claimant B's medical records from 2007-2009 showed that he had some post-surgical problems with his left shoulder, but nothing disabling. His physicians found him temporarily disabled after surgery, for less than one year. Claimant B had left shoulder surgery in March 2007. In August 2007 his two orthopedic surgeons noted that Claimant B had not done any physical therapy since his March 2007 surgery. Claimant B was neurologically intact, and his complaints of neck pain and headaches were due to his failure to follow-up with PT and rehab.

In August 2007 a DDS medical review found claimant capable of medium exertion work (i.e., 50 pounds or less) with some physical limitations. As of November 2007 Claimant B's doctor reported that Claimant B was "doing fine" but he wanted to keep hardware in his left shoulder for "at least one year" prior to having it removed. During this time Claimant B receives worker's comp benefits. In August 2008 Claimant B was awarded only a 7% permanent partial disability (i.e., some limits in the left shoulder, but 93% functional use).

In December 2008 Claimant B was evaluated by a social worker for mental health care. Claimant B reported he was smoking marijuana on a daily basis, and was not on any prescribed medications. He reported independent ADLs (activities of daily living) and had no problems socially, although he had just recently gotten out of jail. Claimant B was seeking mental health treatment, because he had to go back to court in a few weeks to either face more jail time or a longer probation. He reported collecting unemployment since 2006. The social worker noted that Claimant B's mental exam appear to be completely normal, even though the claimant reported "moderate" social and concentration limits.

As June 2009, medical records showed that the Claimant B reported to his medical providers that he was working as a truck driver, and enjoying both hunting and fishing as hobbies (NB: Interestingly, Claimant B's social security earnings showed no work income since 2005).

In June 2009 Claimant B had a psychiatric evaluation with a psychiatrist for the first time, specifically for "drug rehabilitation... marijuana" abuse. He reported that he had been using marijuana daily since age 17, although he believed he had been sober from marijuana use since August 2008. Claimant B had been going to Narcotics Anonymous meetings twice a week for marijuana rehabilitation since January 2009. He had a lot of financial stressors, especially

since his worker's compensation had stopped in February 2009. He had difficulty paying his bills. Claimant B reported that he had a Social Security disability application pending.

In June 2009 Claimant B was recommended to return to physical therapy. He was encouraged to take over-the-counter anti-inflammatories for left shoulder complaints. He was denied narcotic medication. It was noted that he had only done three months of left shoulder physical therapy in 2008, was still smoking cigarettes, and had never had any injections in his left shoulder.

In August 2009 a occupational therapist found that Claimant B had a 90% range of motion in his left shoulder. A second physical therapist did another examination and found that no further left shoulder treatment was required.

That same month, in August 2009, Claimant B had cervical spine surgery. In September 2009 the claimant reported a significant decrease of neck pain. By October 2009 Claimant B was six weeks out from surgical cervical surgery. His surgeon noted Claimant B was doing well and had excellent resolution of his neck pain. By November 2009 Claimant B had full motor strength in his right shoulder despite a "nonspecific pattern" of right upper extremity pain. His left shoulder pain complaints were unchanged, but objective test showed goods postsurgical results. In November 2009 the claimant was advised to return to physical therapy and to wean off narcotics. As of 2010 the claimant was 43 years old.

No Hearing Ever Held: After the 4<sup>th</sup> hearing was continued, the first Judge set a 5<sup>th</sup> hearing. A few days later, SSA management removed the case from the Judge. The case was deemed an "aged" case that needed to be expedited. The case was re-assigned to a second Judge in the office who always "made goal."

The first Judge offered give the second Judge all the background information, as well as all the Judge's work review notes. The second Judge declined to accept the notes or discuss the facts of the case.

The second Judge then cancelled the hearing and issued a Fully Favorable decision (i.e., a "pay" decision). This award of disability benefits dated back to the August 2006. The second Judge Claimant B was fully credible in his allegations of pain and physical limitations. The second Judge found that Claimant B could only perform sedentary work, with so many physical limitations that Claimant B was disabled from all work. There was no discussion in the decision about Claimant B's unemployment payments, drug and alcohol abuse, hunting and fishing activities, or any discussion about the physicians who had released Claimant B to return to work.

This "pay" decision helped the office "make goal" for the month.

## **EXHIBIT G - Unilateral Reassignment of Cases**

This is an example of management's practice of unilaterally reassignment.

The same case was reassigned to 3 different Judges without telling any of them. Each unilateral reassignment occurred after the assigned Judge granted a continuance or allowed the case more time for adjudication.

Management's production agenda requires pushing a case "down the conveyor belt" as fast as possible. Thus, from SSA management's point of view, if the case is continued (which is not preferred) or allowed more time (also not preferred) then the most important thing to do is to get the case back on any Judge's calendar, in order to get the case "out the door." SSA management's production agenda mandates speed in lieu of meaningful adjudication.

As a result, the easiest management solution is to re-schedule the hearing on the calendar of whichever Judge has the earliest opening. Ideally, from a management perspective, this will lead to a decision being "produced" as quickly as possible after more time was granted on the case.

SSA management ignores that the first Judge is supposed to retain jurisdiction. SSA management ignores the fact that the first Judge (and later, the second Judge) has already spent hours of time reading difficult medical evidence and preparing the case for a hearing. The time a Judge spends on a case is meaningless to a management agenda that is narrowly focused on "production" speed. The Judge's work hours preparing for a case have no relevance to the production measure.

In addition, management's unilateral reassignment of a case serves to "punish" a Judge who grants more time. It also serves to "educate" the Judge that all work, other than a decision, is wasted time. None of the adjudication work the first Judge performs on the case is acknowledged in any way in management's "production" statistics or agenda.

To: Judge B\*\*\*, Judge A\*\*\*, Judge C\*\*\*, Judge W\*\*\*, and Judge J\*\*\*

From: Judge JE Sullivan

Date: 3/6/10

Re: Another case of Management unilateral reassignment of cases

V----- C-----, \*\*\*\_\*\*\_\*\*\*\* (paper & E-file)

Judge B\*\*\*\* and I found another case of unilateral management reassignment without notice to any Judge. This case was initially decided and denied by Judge C\*\*\* on 2/07/07. The pro se claimant appealed, and the Appeals Council denied review on 3/29/07. The claimant then filed a new appeal on 12/26/07. On 10/28/08 Judge M\*\*\* responded to a congressional inquiry regarding the status of the claimant's newest application.

The new appeal was then assigned again to Judge C\*\*\* in 2009. Because the case involved a *res judicata* finding, she was given the paper file, and also provided with the new evidentiary filings electronically. Judge C\*\*\* fully reviewed and prepped the case. On 10/7/09 Judge C\*\*\* held a hearing in \*\*\*\*\*, WV. At that time the claimant appeared late to the hearing, because she had gotten lost. Unfortunately, the claimant was so late that Judge C\*\*\* was not able to hold the hearing. The claimant's request for continuance of the hearing was granted.

After Judge C\*\*\*'s return from \*\*\*\*\*, WV, she gave the file to the office clerk to reset on her calendar. Instead, the office unilaterally reassigned the case to Judge A\*\*\*, and put it on Judge A\*\*\*'s January 2010 \*\*\*\*\*, WV docket. This was done without notice to Judge C\*\*\*, even though Judge C\*\*\* was also scheduling and hearing cases in \*\*\*\*\*, WV in January 2010. The record does not show that either Judge C\*\*\* or Judge A\*\*\* were ever notified of this reassignment, agreed to it, or that it was necessary for any reason.

Judge A\*\*\* then duplicated all the work of review and fully prepped the case for hearing, not realizing that Judge C\*\*\* had already been assigned the case, and that Judge C\*\*\* had done full preparatory work. Judge A\*\*\* then held a hearing on 1/--/10 in \*\*\*\*\*, WV. The Claimant failed to appear, and Judge A\*\*\* dismissed the case.

The E-file shows that the claimant then filed a letter, dated 1/--/10, asserting that she had had transportation problems, which is why she failed to appear for the 1/--/10 hearing. After Judge A\*\*\* granted good cause to reopen the case, the office unilaterally reassigned the case away from Judge A\*\*\*, and assigned it to Judge B\*\*\*, without

notice to either Judge A\*\*\* or Judge C\*\*\*. The case was set on Judge B\*\*\*'s calendar. He was not informed of Judge A's\*\*\* or Judge C's\*\*\* involvement.

Judge B\*\*\* and I have talked about this case (we were both here on Saturday, 3/6/10), and we agree that the case has been improperly re-assigned to him. On a different note entirely, we both find it extraordinarily disturbing that there is a lack of management understanding/recognition of all the judicial time and resources it takes to just prep this file once (as opposed to 3xs!).

There's an interesting issue of conflict law involved in this particular case. Given the fact that Judge C\*\*\* was originally assigned the case, she has original jurisdiction since the reassignment to Judge A\*\*\* was in violation of Judge C\*\*\*'s original assignment. However, after the re-assignment occurred, Judge A\*\*\* exercised discretionary rulings when he ordered the case dismissed, and found good cause to reopen. So it is an arguable issue (depending on your conflict of laws perspective) as to whether Judge C\*\*\* or Judge A\*\*\* should have the case. Judge B\*\*\* and I did not feel it was necessary for us to determine which Judge (i.e., Judge C\*\*\* or Judge A\*\*\*), the case should be returned to, since Judge C\*\*\* and Judge A\*\*\* can easily work that out between themselves.

Judge B\*\*\* and I also agree that this should be added to our dinner discussion on 3/18/10. I will talk to Judge J\*\*\* in the interim, given the growing pattern we are finding of the office's unilateral reassignments. In the meantime, I have returned the file to Liz, and asked her to cancel the 3/--/10 hearing on Judge B\*\*\*'s calendar, and then wait for a Judge C\*\*\* and Judge A\*\*\* to advise her on whose calendar it should be reset.

Judge J. E. Sullivan  
U.S. Administrative Law Judge

Judge J. E. Sullivan has served as a U.S. Administrative Law Judge for the U.S. Department of Transportation in Washington, D.C. since July 2011, presiding over complex transportation regulatory litigation throughout the United States. She is an active member of the National Association of Women Judges (NAWJ), the ABA Judicial Division (NCALJ), the Federal Administrative Law Judges Conference (FALJC) and the Judicial Division of the Federal Bar Association (FBA).

Highlights of 24 Years of Judicial Service: Judge Sullivan has served as a Judge for 24 years in multiple state courts and administrative tribunals. She has also served as an arbitrator, mediator, and settlement conference facilitator.

From June 1989 through June 1999 (10 years), Judge Sullivan served regularly as a pro tem Superior Court Judge and pro tem Superior Court Commissioner on civil and criminal cases for Snohomish County Superior Court in Washington State (the court of general jurisdiction). She also served as a Snohomish County Superior Court arbitrator (1991-1999), a pro tem District Court Judge for the four Snohomish County District Courts (the courts of limited jurisdiction) (1991-1998), and as a private mediator and arbitrator (1991-1999).

From July 1999 through March 2008 (9 years), Judge Sullivan served as an Industrial Insurance Appeals Judge with the Washington State Board of Industrial Insurance Appeals (BIIA), where she presided over complex adversarial hearings on business tax assessments and insurance classifications, worker's compensation and fraud, medical provider license revocations, and crime victim compensation appeals.

From April 2008 through June 2011 (3 years), Judge Sullivan served as a U.S. Administrative Law Judge for the U.S. Social Security Administration. From April 2008 through January 2010 she presided over disability cases in a four state area (West Virginia, Maryland, Pennsylvania, and Ohio). Then from February 2010 to June 2011, Judge Sullivan served as one of eight SSA Judges on the Association of Administrative Law Judges (AALJ) national collective bargaining team.

Since July 2011, Judge Sullivan has served as a U.S. Administrative Law Judge for the U.S. Department of Transportation, presiding over complex transportation regulatory litigation.

Other Highlights: Prior to 1989, Judge Sullivan litigated both criminal and civil cases, serving both as a deputy prosecuting attorney and as a criminal defense trial attorney. In 1992 she served as a member of the Washington State Supreme Court's Gender and Justice Commission. Judge Sullivan has been a guest speaker for the NAWJ, the NAALJ, the BIIA, the University of Washington's School of Law, and for the Washington State Bar Association. She has taught law classes, and has been a guest speaker at a variety of CLE seminars, as well as for various public and private organizations.