IN THE COURT OF GENERAL SESSIONS

APPEAL FROM ANDERSON COUNTY

JESUS MARTINEZ VARGAS,

Petitioner / Appellant,

vs.

THE STATE,

Respondent

Appellate Case No.: 2016-000527
Case No.: Assault and Battery Of A High And Aggravated Nature 2015-GS-04-00781;
Pointing/Presenting A Firearm 2015-GS-04-00782

On the following pages you will find further evidence proving my appeal case. I underwent countless ultra-sounds, X-rays, exams and MRI's and have been proven to suffer from over 75% iliac stenosis (Exhibit 14F/31), greater than 75% vascular disease, bilateral hip osteoarthritis, severe type 2 diabetes, with a 50% permanent back impairment and a 50% whole body impairment (Exhibit 5F), sciatica (exhibit 8F/47), high blood pressure and many hospitalization including a antalgic gait and decreased lumbar spine motion (exhibit 33F/2),

I was and have been disabled since 2013, making it impossible for me Jesus Martinez a disabled 50 year old 5'-4" man to beat up a healthy 35 year old man. Many of his statements are impossible to have been achieved and much less being disabled. Mr. Mills claims I hit him with my left hand and then claims it was my right hand. He claims I hit him in the back of the head while he was standing and facing me, while having pushed me at the same time. This is a man with a height of over 6 feet. His statements do not add up nor have a continuous plot. I was and have been disabled since 2013 and continue to be so to this day. I plead that the court review these evidences and use them on my current appeal case.

Jesus Martinez, Prison Cell # 367256, BLUFFTON B-15

10/06/17

SOCIAL SECURITY ADMINISTRATION

Office of Disability Adjudication and Review
Suite 200
300 University Ridge
Greenville, SC 29601-3645

Date: September 25, 2017

Jesus V. Martinez
C/O 367256
Ridgeland Correctional
Institution
P O Box 2039
Ridgeland, SC 29936

Notice of Decision – Partially Favorable

I carefully reviewed the facts of your case and made the enclosed partially 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 must ask in writing that the Appeals Council review my decision. You may use our Request for Review form (HA-520) or write a letter. The form is available at www.socialsecurity.gov. Please put the Social Security number shown above on any appeal you file. If you need help, you may file in person at any Social Security or hearing office.

Please send your request to:

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

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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Time Limit To File An Appeal

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

The Appeals Council will dismiss a late request unless you show you had a good reason for not filing it on time.

What Else You May Send Us

You 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.

Your Right To Representation In An Appeal

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If you appeal, you may choose to have an attorney or other person help you. Many representatives do not charge a fee unless you win your appeal. Groups are available to help you find a representative or, if you qualify, to give you free legal services. Your local Social Security office has a list of groups that can help you in this process.

If you get someone to help you with your appeal, you or that person must let the Appeals Council know. If you hire someone, we must approve the fee before he or she is allowed to collect it.

New Application

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with my decision and you file a new application instead of appealing, you might lose some benefits or not qualify for benefits at all. My decision could also be used to deny a new application for benefits if the facts and issues are the same. If you disagree with my decision, you should file an appeal within 60 days.

If You Have Any Questions

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

If you have any other questions, please call, write, or visit any Social Security office. Please have this notice and decision with you. The telephone number of the local office that serves your area is (866)526-9854. Its address is:

Social Security
292 Professional Park
Clinton, SC 29325-7624

Ann G. Paschall
Administrative Law Judge

Enclosures:
Decision Rationale
Form HA-L39 (Exhibit List)

SOCIAL SECURITY ADMINISTRATION
Office of Disability Adjudication and Review

DECISION

IN THE CASE OF	CLAIM FOR
Jesus V. Martinez (Claimant)	Period of Disability and Disability Insurance Benefits
(Wage Earner)	250-73-5743 (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

On September 25, 2014, claimant protectively filed a Title II application for a period of disability and disability insurance benefits, alleging disability beginning May 15, 2012. The claim was denied initially on January 23, 2015 and upon reconsideration on May 1, 2015. Thereafter, claimant filed a written request for hearing on June 19, 2015 (20 CFR 404.929 *et seq.*). Claimant appeared and testified via telephone at a hearing held on July 27, 2017, in Greenville, SC. Karl S. Weldon, an impartial vocational expert, also appeared at the hearing. Martin Pollock appeared as an interpreter at the hearing. Although informed of the right to representation, claimant chose to appear and testify without the assistance of an attorney or other representative.

Claimant submitted or informed the Administrative Law Judge about all written evidence at least five business days before the date of claimant's scheduled hearing (20 CFR 404.935(a)).

ISSUES

The issue is whether claimant is disabled under sections 216(i) and 223(d) of the Social Security Act. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

There is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. Claimant's earnings record shows that claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2013. Thus, claimant must establish disability on or before that date in order to be entitled to a period of disability and disability insurance benefits.

After careful consideration of all the evidence, I conclude that claimant was not disabled prior to April 1, 2013, but became disabled on that date and has continued to be disabled through the date of this decision. I also find that the insured status requirements of the Social Security Act were met as of the date disability is established.

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APPLICABLE LAW

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a)). The steps are followed in order. If it is determined that claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, I must determine whether claimant is engaging in substantial gainful activity (20 CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has demonstrated the ability to engage in SGA (20 CFR 404.1574 and 404.1575). If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, I must determine whether claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1522; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, I must determine whether claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, and 404.1526). If claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509), claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, I must first determine claimant's residual functional capacity (20 CFR 404.1520(e)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, I must consider all of claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e) and 404.1545; SSR 96-8p).

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Next, I must determine at step four whether claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f)). The term past relevant work means work performed (either as claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for claimant to learn to do the job and have been SGA (20 CFR 404.1560(b) and 404.1565). If claimant has the residual functional capacity to do his past relevant work, claimant is not disabled. If claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g)), I must determine whether claimant is able to do any other work considering his residual functional capacity, age, education, and work experience. If claimant is able to do other work, he is not disabled. If claimant is not able to do other work and meets the duration requirement, he is disabled. Although claimant generally continues to have the burden of proving disability at this step, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512(g) and 404.1560(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful consideration of the entire record, I make the following findings:

1. Claimant meets the insured status requirements of the Social Security Act through December 31, 2013.

2. Claimant has not engaged in substantial gainful activity since May 15, 2012, the alleged onset date (20 CFR 404.1571 *et seq.*).

3. Since the alleged onset date of disability, May 15, 2012, claimant has had the following severe impairments: bilateral hip degenerative joint disease, type 2 diabetes with neuropathy, and lumbar spine disorders (20 CFR 404.1520(c)).

The impairments listed in the above finding have caused significant limitations in claimant's ability to perform basic work activities, as described under Findings 6 and 7, and have therefore been severe.

Medical treatment records also report diabetic macular edema, diabetic retinopathy, nuclear sclerosis, and peripheral pterygium (Exhibit 16F). However, treatment notes indicate claimant's visual acuity was normal with correction and claimant's visual fields were full (Exhibit 16F/3, 12, 29, 32, 40, and 44; Exhibit 48F/2). In addition, Ted Roper, M.D., and Joseph Geer, M.D., reviewed claimant's records and concluded claimant's visual disorders were nonsevere (Exhibit 1A/8; Exhibit 4A/8). Therefore, I conclude claimant's visual disorders are nonsevere.

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Claimant also described recurrent headaches in his testimony. However, the record reveals no specialized neurological treatment for headaches nor does it show any related abnormalities demonstrated by diagnostic imaging of the head or brain. Further, claimant did not report taking any particular medications for headaches in his medications forms (Exhibits 15E and 21E). Therefore, I conclude that, while claimant may experience some periodic headaches related to his severe impairments, such do not warrant any work-related restrictions.

While records indicate some depression (Exhibit 19F/4), the record reveals no specialized mental health treatment as would be expected if claimant's depression was significantly limiting. Also, treatment notes do not document persistent depressive or psychiatric complaints. Therefore, I conclude the depression causes no more than mild limitations in understanding, remembering, or applying information, interacting with others, concentrating, persisting, and maintaining pace, or adaptation and managing oneself. Thus, claimant's depression is nonsevere.

Claimant additionally testified he experiences hand, shoulder, and neck pain. However, the record reveals no objective evidence from an acceptable medical source demonstrating the presence of hand, shoulder, or neck abnormalities. Thus, I conclude claimant has no medically determinable head, shoulder, or neck impairment. I further note that treatment notes do not document any consistent neck, shoulder, or hand complaints.

4. Beginning on April 1, 2013, claimant has had the following severe impairment: peripheral vascular disease.

As described under Finding 7, claimant underwent stenting in April 2013 due to iliac stenosis and I conclude such has caused significant work-related limitations since April 2013.

Records from prior to April 2013 document lower extremity symptoms, but reveal no diagnosis of iliac stenosis or peripheral vascular disease, nor do they reveal testing showing iliac stenosis or peripheral vascular disease. Therefore, I conclude the iliac stenosis or peripheral vascular disease were not medically determinable prior to April 2013. I note, however, that, regardless of whether this impairment was medically determinable prior to April 2013, I conclude claimant had the residual functional capacities described in Findings 6 and 7 based largely on the medical signs and symptoms documented during the corresponding time periods.

5. Since the alleged onset date of disability, May 15, 2012, claimant has not had an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525 and 404.1526).

I note initially that Drs. Geer and Roper reviewed claimant's records and concluded claimant's physical impairments did not meet or equal any listing (Exhibits 1A and 4A).

As to the spinal disorders, spinal imaging described under Findings 6 and 7 did not show nerve root or spinal cord compromise as required by listing 1.04.

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As to the hip impairments, records do not demonstrate an inability to ambulate effectively as required by listing 1.02A. While exams cited under Findings 6 and 7 showed some antalgic gait, claimant did not require an assistive device for ambulation. Also, Carol Burnette, M.D., indicated claimant could stand or walk between 2 and 3 hours a day (Exhibit 38F/9).

As to the peripheral vascular disease, testing did not yield the values required to meet listing 4.12 (See, for example, Exhibit 30F/6).

As to the neuropathy, records do not show such caused an inability to stand from a seated position or balance while standing, nor do records indicate the neuropathy had a substantial effect on claimant's ability to understand, remember, or apply information, interact with others, concentrate, persist, or maintain pace, or adapt and manage himself. I note that electromyography only showed a "moderate" right lower extremity neuropathy (Exhibit 11F/7).

6. After careful consideration of the entire record, I find that prior to April 1, 2013, the date claimant became disabled, claimant had the residual functional capacity to perform the full range of sedentary work as defined in 20 CFR 404.1567(a).

In making this finding, I have considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSR 96-4p. I have also considered opinion evidence in accordance with the requirements of 20 CFR 404.1529.

In considering claimant's symptoms, I must follow a two-step process in which it must first be determined whether there is an underlying medically determinable physical or mental impairment(s)--i.e., an impairment(s) that can be shown by shown by medically acceptable clinical or laboratory diagnostic techniques--that could reasonably be expected to produce claimant's pain or other symptoms.

Second, once an underlying physical or mental impairment(s) that could reasonably be expected to produce claimant's pain or other symptoms has been shown, I must evaluate the intensity, persistence, and limiting effects of claimant's symptoms to determine the extent to which they limit claimant's work-related activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, I considered other evidence in the record to determine if claimant's symptoms limited the ability to do work-related activities.

At the hearing on July 27, 2017, claimant testified he experiences back, leg, foot, hand, shoulder, and neck pain, as well as headaches. Claimant also testified he lies down much of the time. Claimant additionally stated he can stand for about 3 minutes before experiencing foot pain, cannot lift or carry much due to back problems, had a right leg surgery in 2013, and has diabetes.

Medical evidence from prior to April 2013 partially supports claimant's allegations. Treatment notes from 2012 document some back and right hip complaints (Exhibits 1F and 2F), exam in October 2012 showed right hip tenderness (Exhibit 4F/1), and MRI in November 2012 revealed bilateral hip osteoarthritis (Exhibit 4F/4). Records from 2012 also document diabetes (Exhibit

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2F/2), and treatment notes from November 2012 report peripheral neuropathy in the feet (Exhibit 8F/72). In addition, notes from January 2013 report ongoing right hip complaints (Exhibit 4F/15), and records from March 2013 report sciatica (Exhibit 8F/47).

Records described above demonstrate the presence of significant back, hip, and neuropathic symptoms, which would reasonably be expected to cause substantial problems lifting, carrying, standing, and walking. Therefore, I conclude claimant was only capable of performing sedentary work prior to April 1, 2013.

Nonetheless, I conclude no additional limitations were warranted prior to April 1, 2013. While claimant testified he can only stand for 3 minutes before experiencing foot pain and has to lie down most of the time, such allegations are inconsistent with medical evidence from prior to April 2013. First, right hip and lumbar spine x-rays in April 2012 were unremarkable (Exhibit 1F/13 and 15), and Christopher Clemow, M.D., reported a lumbar spine MRI in November 2012 was normal other than Schmorl's nodes (Exhibit 4F/14). Second, exams showed largely intact functional ability. Specifically, exam in April 2012 showed no back tenderness and normal hip, knee, and foot motion (Exhibit 1F/2), exam in October 2012 demonstrated normal gait, strength, muscle tone, back motion, and reflexes (Exhibit 2F/2), exam in January 2013 showed only "minimal" hip tenderness with "no rotational deficits" (Exhibit 4F/15), and exam in March 2013 revealed no back tenderness, normal straight leg raising, and normal back motion (Exhibit 8F/47). Third, treatment notes from prior to April 2013 also do not document persistent neuropathic signs or symptoms, indicating these neuropathic issues were periodic or modest.

As to the diabetes specifically, treatment notes from February 2013 report claimant's sugars were "better controlled" (Exhibit 25F/29), and treatment notes from March 2013 indicate claimant's hemoglobin A1c had improved to 8.5 from greater than 14% in November 2012 even without total compliance with medical directives (Exhibit 8F/50).

After careful consideration of the evidence, I find that, other than the alleged neck and shoulder problems, claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, claimant's statements concerning the intensity, persistence, and limiting effects of these symptoms are not fully supported prior to April 1, 2013, for the reasons explained in this decision.

As for the opinion evidence, Dr. Clemow completed a statement concerning claimant in January 2013. Therein, Dr. Clemow reported claimant's back and hip pain was due to weakness and hip tendinopathy. Dr. Clemow also indicated claimant's back and hip problems probably would not "result in permanent impairment" (Exhibit 3F).

I accord Dr. Clemow's opinions significant weight for the period prior to April 2013 because Dr. Clemow is a treating physician and the unremarkable exam findings and diagnostic imaging described above lends some support to Dr. Clemow's opinions. However, I conclude claimant's back and hip issues, in combination with the neuropathic problems, warrant significant exertional limitations as described above.

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Jennifer Thomas, M.D., completed a statement concerning claimant in April 2013. Therein, Dr. Thomas reported claimant had had "disabling right hip pain" since January 2012, though "hopefully" claimant "w[ould] be able to resume all previous activities" (Exhibit 17F/71).

Also, in May 2013, Dr. Thomas indicated it was likely claimant had been unable to work beginning in April 2012 (Exhibit 6F). In another statement from May 2013, Dr. Thomas reported claimant "certainly may be permanently disabled from his back injury, but I would defer to the appropriate specialists to make that determination." Also in this latter May 2013 statement, Dr. Thomas indicated claimant had a 50% permanent back impairment and a 50% whole body impairment (Exhibit 5F).

I accord Dr. Thomas' opinions little weight. While Dr. Thomas is a treating physician, Dr. Thomas' opinions that claimant's right hip or back pain had been disabling or had precluded work since January or April 2012 are vague because such do not indicate specific work-related limitations. Moreover, these opinions are inconsistent with treatment records described above, particularly the mostly unremarkable physical exam findings documented prior to April 2013, indicating claimant's hip and back problems were not greatly limiting. Further, while Dr. Thomas indicated at one point that claimant had had "disabling" right hip pain since January 2012, records indicate claimant was able to work full-time from January 2012 through April 2012 (Exhibit 3E/2; Exhibit 6F). Moreover, Dr. Thomas' opinions are also inconsistent with those of Drs. Clemow, Geer, and Roper. In addition, the opinion that claimant had a 50% impairment is vague because it does not indicate specific work-related limitations.

Dr. Roper completed a Physical Residual Functional Capacity Assessment concerning claimant in January 2015. Therein, Dr. Roper reported claimant had right hip impairments with related pain and a history of iliac stenting. Dr. Roper assessed claimant could lift or carry 10 pounds frequently and 20 pounds occasionally, occasionally crawl and climb ladders, ropes, and scaffolds, and frequently climb ramps, climb stairs, balance, stoop, kneel, and crouch. Dr. Roper also assessed claimant should avoid concentrated exposure to hazards. Dr. Roper further assessed claimant had nonsevere diabetes and visual disorders, noting that testing showed normal visual acuity and medical evidence only showed equivocal evidence of neuropathy (Exhibit 1A).

Dr. Geer reached the same conclusions as Dr. Roper after reviewing claimant's records in April 2015. Dr. Geer noted that exam in January 2015 showed show decreased lumbar spine motion, back tenderness, and antalgic gait, though claimant had no atrophy, had no trigger points, and demonstrated intact sensation. Dr. Geer also noted that exam in April 2015 revealed normal gait and station, and no use of an assistive device (Exhibit 4A).

I give the opinions of Drs. Roper and Geer partial weight. Drs. Roper and Geer are physicians with substantial experience applying Social Security disability law and policy who reviewed evidence from varied sources and assessed comprehensive and specific work-related physical limitations. Also, the conclusion that claimant's visual disorders were nonsevere is consistent with other evidence cited under Finding 3 showing intact visual acuity and fields. However, I conclude claimant was restricted to sedentary work exertionally throughout the period at issue, and I note in particular that the combination of back, right hip, and neuropathic pain would reasonably be expected to cause substantial limitations standing and walking. Also, while Drs.

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Roper and Geer assessed some significant postural and environmental limitations, exams cited above showed generally intact musculoskeletal ranges of motion, and it is unclear why Drs. Roper and Geer concluded claimant should avoid concentrated exposure to hazards.

In sum, records from prior to April 2013 document persistent back and hip pain, diabetes with some control issues, and some neuropathy. However, diagnostic imaging of the hips and lumbar spine showed only modest abnormalities at most, physical examinations were mostly unremarkable, the diabetes came under better control with better compliance, Dr. Clemow's statements indicate the back and hip impairments were modest, and treatment notes do not document consistent neuropathic complaints.

7. After careful consideration of the entire record, I find that beginning on April 1, 2013, claimant has had the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(a), except that claimant would miss work 4 days per month and be off-task 20% of the workday.

In reaching this conclusion, I find that beginning on April 1, 2013, claimant's allegations concerning his need to lie down during the day are more consistent with the evidence, in particular, the opinions of Carol Burnette, M.D., described below. Medical evidence described below otherwise shows claimant's condition worsened beginning in April 2013.

Exam on April 4, 2013, revealed no palpable right foot pedal pulses (Exhibit 14F/31), Doppler ultrasound on April 5, 2013, showed greater than 75% right iliac stenosis (Exhibit 17F/87), and treatment notes from several days later indicate claimant could only walk short distances (Exhibit 17F/80). Claimant then underwent angioplasty and stenting of iliac artery stenosis on April 16, 2013 (Exhibit 17F/76).

In addition, lumbar spine x-rays in April 2013 showed degenerative changes (Exhibit 8F/33), treatment notes from April 2013 report "worsening [back] pain and exam findings" (Exhibit 8F/28), and treatment notes from June 2013 report ongoing back pain (Exhibit 17F/56). Also, exams in May and July 2013 showed decreased foot sensation (Exhibit 8F/3; Exhibit 24F/5), exam in July 2013 revealed antalgic gait (Exhibit 7F/3), records from August 2013 report ongoing right leg pain with difficulty walking (Exhibit 11F/3), and electromyography in August 2013 revealed moderate right peroneal and tibial neuropathy (Exhibit 11F/7). In addition, exam in January 2014 showed right leg weakness, positive straight leg raising on the right, and decreased right reflexes (Exhibit 14F/106), notes from June 2014 report ongoing peripheral neuropathy (Exhibit 17F/24), exam in August 2014 showed decreased right leg sensation (Exhibit 19F/9), and labs in August 2014 revealed elevated sedimentation rate (Exhibit 19F/15). Records from August 2014 further report peripheral arterial disease and recurrent right iliac stent stenosis (Exhibit 20F/71), and claimant underwent angioplasty of right common iliac artery in-stent stenosis at that time (Exhibit 19F/23-24).

Going forward, claimant was hospitalized overnight in October 2014 due primarily to hyperglycemia (Exhibit 21F/1), and exam in December 2014 revealed antalgic gait and decreased lumbar spine motion (Exhibit 33F/2). Also, Dr. Burnette reported worsening back, hip, and leg pain in May 2015 (Exhibit 39F/35). In addition, treatment notes from December

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2015 document ongoing "moderate" back pain worsened by walking as well as ongoing problems with diabetes control and hyperglycemia, and exam at this time showed back spasm and limited back motion (Exhibit 47F/2, 4, and 11). Thereafter, prison records from April 2016 indicate claimant had work restrictions due to medical problems (Exhibit 48F/1), records from September 2016 document complaints of ongoing back and leg pain (Exhibit 48F/46), and records from March 2017 document complaints of ongoing right hip, right leg, and back pain with limping gait (Exhibit 48F/27). Further, records from May 2017 document complaints of foot and leg pain and report chronic musculoskeletal and neuropathic pain (Exhibit 48F/16 and 18).

As for the opinion evidence, in December 2013, Dr. Burnette reported claimant would have problems concentrating due to pain, would have problems staying on task for 2 hour periods, would require breaks in addition to normal work breaks, and would miss work more than 3 days a month (Exhibit 38F/19-21). Also in December 2013, Dr. Burnette reported claimant could lift up to 35 pounds occasionally, could not perform prolonged or repetitive standing, and could not stand more than 30 minutes at a time (Exhibit 38F/17-18).

Dr. Burnette also completed statements concerning claimant in late 2014 and May 2015. Therein, Dr. Burnette reported claimant's back, hip, and leg pain had worsened "in recent months." Dr. Burnette also indicated claimant's conditions precluded substantial gainful activity. Dr. Burnette further reported claimant had hip pain, back pain, antalgic gait, restricted lumbar motion, and neuropathy. Dr. Burnette additionally indicated claimant could lift or carry 30 pounds occasionally and 20 pounds frequently, stand or walk less than 3 hours in an 8 hour workday, and sit less than 6 hours in an 8 hour workday. Dr. Burnette also stated claimant may need to lay down "if having severe pain," would experience interruptions in attention about every hour, and miss work 4 or more days per month (Exhibit 38F/1-12).

In assessing the residual functional capacity described above, I have given Dr. Burnette's opinions great weight. Dr. Burnette is a treating physician, and Dr. Burnette's opinions, particularly the opinions that claimant had substantial problems standing or walking, would need excessive breaks, and would miss 4 or more days of work per month, are generally consistent with other medical evidence described above documenting worsening conditions beginning in April 2013 with persistent, substantial pain and significant observed functional deficits. Dr. Burnette's opinions concerning claimant's need to lay down is also generally consistent with claimant's testimony that he needs to lie down during the day.

However, while Dr. Burnette indicated claimant could lift 30 or 35 pounds, I conclude claimant's severe impairments would preclude such lifting activities, and note that claimant's testimony concerning problems lifting is generally supported by medical evidence of ongoing lower extremity, back, and neuropathic problems.

I give Dr. Burnette's opinions less weight for the period prior to April 2013 because, in contrast to most of Dr. Burnette's opinions, evidence from before April 2013 described under Finding 6 indicates claimant's functional abilities were generally intact, diagnostic imaging was mostly unremarkable, and claimant's diabetes came under control with better compliance.

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In January 2014, Jared Richardson, M.D., reported claimant's hip issues "normally w[ould not] constitute a permanent impairment" (Exhibit 23F/22). I give Dr. Richardson's opinion little weight because it addresses generalities and not claimant's particular conditions, and, contrary to Dr. Richardson's opinion, other medical evidence described above convincingly demonstrates ongoing, significant hip problems warranting functional limitations.

As to Dr. Clemow's January 2013 opinions that claimant's back and hip problems probably would not "result in permanent impairment" (Exhibit 3F), I give such little weight for the period beginning in April 2013 for the same reasons I accord Dr. Richardson's opinions little weight.

As to the opinions of Drs. Geer and Roper for the period beginning April 2013, I conclude that medical evidence indicates claimant's impairments are substantially more limiting than Drs. Geer and Roper assessed. In particular, I note that Dr. Burnette's opinions indicate claimant's impairments are substantially more limiting than Drs. Geer and Roper assessed, and Dr. Burnette's opinions are mostly supported by other evidence as described above.

As to Dr. Thomas' April 2013 opinion that claimant had "disabling right hip pain" and May 2013 opinion that claimant likely could not work (Exhibit 17F/71; Exhibit 6F), I accord such greater weight for the period beginning in April 2013. While these opinions are vague, treatment records described above show claimant's condition worsened beginning in April 2013 and these opinions are generally consistent with those of Dr. Burnette.

In addition, in June 2015, Benson Hecker, Ph.D., reviewed claimant's medical records and opined that claimant was "unable to perform any substantial gainful activity" (Exhibit 9E/14). While these opinions are generally consistent with the opinions of Drs. Burnette and Thomas described above, Dr. Hecker has no medical expertise and did not indicate particular functional limitations. Therefore, I give such little weight.

In sum, records from April 2013 show claimant had to undergo iliac artery stenting due to stenosis and records from this time also show some worsening in claimant's back condition. In addition, electromyography in August 2013 demonstrated moderate neuropathy, claimant had to undergo restenting in August 2014, claimant was hospitalized due primarily to diabetic issues in October 2014, and evidence from April 2013 and thereafter otherwise documents ongoing, significant back and lower extremity symptoms. Further, Dr. Burnette indicated claimant's conditions would cause excessive breaks and work absences.

8. Since May 15, 2012, claimant has been unable to perform any past relevant work (20 CFR 404.1565).

Claimant reported performing past relevant work as a mason or the owner of a masonry company, and as a construction site supervisor (Exhibit 3E/3; Exhibit 1A/5; Exhibit 9E/13). These reports are generally consistent with claimant's Detailed Earnings Query, which shows claimant received substantially gainful earnings within the past 15 years from Construction Hardware Company and JMZ Masonry Inc. (Exhibit 6D). However, while claimant reported these past jobs required working 40 hours or more per week (Exhibit 3E/3), since April 2013, claimant has been unable to remain on task for more than 80% of an 8 hour workday day and

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would also miss work 4 days per month. Therefore, claimant has been unable to sustain full-time work activity. As generally performed, claimant's past jobs would also require the ability to sustain work 8 hours a day and 5 days a week. Therefore, the demands of claimant's past relevant work exceed claimant's residual functional capacity from April 1, 2013, through the present.

As to claimant's ability to perform past relevant work from May 15, 2012, through March 31, 2013, while claimant was limited to performing sedentary work during this period of time, claimant's past relevant work likely had medium or greater exertional requirements (Exhibit 9E/11). I also note that the grid rules direct a finding of "not disabled" during this time period as described below, thus rendering the issue of claimant's ability to perform past relevant immaterial.

9. Prior to the established disability onset date, claimant was a younger individual age 45-49. Claimant became an individual closely approaching advanced age on October 14, 2016 (20 CFR 404.1563).

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

Claimant testified he attended college for two months.

11. Prior to April 1, 2013, transferability of job skills is not material to the determination of disability because applying the Medical-Vocational Rules directly supports a finding of "not disabled" whether or not claimant has transferable job skills. Beginning on April 1, 2013, claimant has not been able to transfer job skills to other occupations (See SSR 82-41 and 20 CFR Part 404, Subpart P, Appendix 2).

Beginning April 1, 2013, claimant has not been able to sustain full-time, competitive work activity.

12. Prior to April 1, 2013, considering claimant's age, education, work experience, and residual functional capacity, there were jobs that existed in significant numbers in the national economy that claimant could have performed (20 CFR 404.1569 and 404.1569a).

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

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has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decisionmaking (SSR 85-15).

Prior to April 1, 2013, based on a residual functional capacity for the full range of sedentary work, I conclude that, considering claimant's age, education, and work experience, a finding of "not disabled" is directed by Medical-Vocational Rule 201.21.

13. Beginning on April 1, 2013, considering claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that claimant can perform (20 CFR 404.1560(c) and 404.1566).

Beginning on April 1, 2013, if claimant had the residual functional capacity to perform the full range of sedentary work, considering claimant's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.21. However, the additional limitations preclude the performance of full-time, competitive work activity. Therefore, a finding of "disabled" is appropriate. Further, as of October 14, 2016, when claimant attained age 50, Rule 201.14 directs a finding of "disabled."

14. Claimant was not disabled prior to April 1, 2013, but became disabled on that date and has continued to be disabled through the date of this decision (20 CFR 404.1520(g)).

DECISION

Based on the application for a period of disability and disability insurance benefits protectively filed on September 25, 2014, claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act beginning on April 1, 2013.

Medical improvement is expected with appropriate treatment. Consequently, a continuing disability review is recommended in 36 months.

Claimant is presently incarcerated. Appropriate consideration should be given to the impact on his past due and present benefits.

/s/ *Ann G. Paschall*

Ann G. Paschall
Administrative Law Judge

September 25, 2017
Date

LIST OF EXHIBITS

Payment Documents/Decisions

Component No.	Description	Received	Dates	Pages
HO 1A	T2 Initial DDE: Signed by DDS Drs.		01/22/2015	10
HO 2A	T2 Initial Disability Determination Transmittal		01/23/2015	1
HO 3A	Explanation of Determination		01/23/2015	1
HO 4A	T2 Recon DDE: Signed by DDS Drs.		04/28/2015	11
HO 5A	T2 Recon Disability Determination Transmittal		04/30/2015	1
HO 6A	Explanation of Determination		05/01/2015	1

Jurisdictional Documents/Notices

Component No.	Description	Received	Dates	Pages
HO 1B	T2 Notice of Disapproved Claim		01/23/2015	4
HO 2B	Appointment of Representative H Jeff McLeod, atty		03/03/2015	1
HO 3B	Representative Fee Agreement H Jeff McLeod, atty		03/03/2015	1
HO 4B	Request for Reconsideration		03/06/2015	1
HO 5B	T2 Disability Reconsideration Notice		05/01/2015	4
HO 6B	Request for Hearing by ALJ		06/19/2015	2
HO 7B	Request for Hearing Acknowledgement Letter		07/23/2015	11
HO 8B	Objection to Video Hearing		07/30/2015	1

HO 9B	Appointment of Representative W McBride	11/05/2015	1
HO 10B	Claimant's Change of Address Notification	08/09/2016	1
HO 11B	Withdrawal/Revocation of Representation H Jeff McLeod- waives fee	08/11/2016	1
HO 12B	Ltr to Clmt advising that file update is needed	12/14/2016	11
HO 13B	Clmt's tr (written in Spanish)	01/11/2017	5
HO 14B	Hearing Notice - MAY 10, 2017 @ 2:30 PM (PH HRNG W/JAIL)	02/03/2017	38
HO 15B	Acknowledge Notice of Hearing (Spanish) - in jail; will attend via phone hearing	02/08/2017	1
HO 16B	Acknowledge Notice of Hearing; will attend via phone hearing	02/08/2017	1
HO 17B	Outgoing ODAR Correspondence - re: Notice of National Uniformity Cases	03/24/2017	3
HO 18B	Notice Of Hearing Reminder	04/26/2017	6
HO 19B	Withdrawal/Revocation of Representation - William McBride w/ Fee Waiver	05/04/2017	2
HO 20B	Hearing Notice - JULY 27, 2017 @ 2:45 PM (IN JAIL VIA PH 843-726-6888)	05/11/2017	26
HO 21B	due process notice	06/07/2017	1
HO 22B	Acknowledge Notice of Hearing (Spanish)	05/29/2017	10
HO 23B	Report of Contact-Translation of Exhibit 22B	06/12/2017	2
HO 24B	Notice Of Hearing Reminder	07/13/2017	1

Non-Disability Development

Component No.	Description	Received	Dates	Pages
HO 1D	Application for Disability Insurance Benefits		10/10/2014	7
HO 2D	Certified Earnings Records		10/20/2016	2
HO 3D	New Hire, Quarter Wage, Unemployment Query (NDNH)		10/20/2016	2
HO 4D	Summary Earnings Query		10/20/2016	1
HO 5D	Detailed Earnings Query		10/20/2016	4
HO 6D	New Hire, Quarter Wage, Unemployment Query (NDNH)		05/01/2017	2
HO 7D	Certified Earnings Records		05/01/2017	3
HO 8D	New Hire, Quarter Wage, Unemployment Query (NDNH)		07/17/2017	2
HO 9D	Certified Earnings Records		07/17/2017	3

Disability Related Development

Component No.	Description	Received	Source	Dates	Pages
HO 1E	Resume of Vocational Expert		Benson Hecker, PhD	to 06/04/2014	6
HO 2E	Disability Report - Field Office			to 10/10/2014	3
HO 3E	Disability Report - Adult			to 10/15/2014	10
HO 4E	DDS Disability Worksheet		DDS	10/16/2014 to 01/23/2015	4
HO 5E	Disability Report - Field Office			to 03/11/2015	2

HO 6E	Disability Report - Appeals		to 03/11/2015	7
HO 7E	DDS Disability Worksheet	DDS	03/12/2015 to 05/01/2015	3
HO 8E	Vocational Consultant's Comments	Benson Hecker, PhD	to 06/04/2015	14
HO 9E	Vocational Consultant's Comments	Benson Hecker, PhD	to 06/04/2015	20
HO 10E	Disability Report - Field Office		to 06/22/2015	2
HO 11E	Disability Report - Appeals		to 06/22/2015	14
HO 12E	Exhibit List to Rep PH2E	ODAR	to 10/25/2016	9
HO 13E	Work Background		to 01/11/2017	1
HO 14E	Recent Medical Treatment		to 01/11/2017	1
HO 15E	Medications		to 01/11/2017	2
HO 16E	Resume of Vocational Expert	Karl Weldon	to 04/22/2017	1
HO 17E	Claimant Correspondence (re: claimant's letter in Spanish)	Jesus V. Martinez	to 02/08/2017	6
HO 18E	Claimant Correspondence - re: request for interpreter (claimant in jail)	Claimant Jesus Martinez	to 02/16/2017	2
HO 19E	Claimant Correspondence	JESUS MARTINEZ, CLMNT	to 04/05/2017	4

HO 20E	Resume of Vocational Expert	KARL WELDON	to 06/03/2017	1
HO 21E	Medications		to 06/06/2017	2

Medical Records

Component No.	Description	Received	Source	Dates	Pages
HO 1F	Emergency Department Records		Waccamaw Community Hospital	to 04/25/2012	16
HO 2F	Office Treatment Records		Jerry Purcell, MD/RediCare	10/01/2012 to 10/09/2012	7
HO 3F	Treating Source Statement		Christopher Clemow, MD	to 01/04/2013	2
HO 4F	Office Treatment Records		Blue Ridge Orthopaedic/Christopher Clemow, MD	10/12/2012 to 04/04/2013	19
HO 5F	Treating Source Statement		Jennifer Thomas, MD	to 05/01/2013	2
HO 6F	Treating Source Statement		Jennifer Thomas, MD	to 05/20/2013	1
HO 7F	Office Treatment Records		Piedmont Spine & Neurosurgical/Aaron MacDonald, MD	to 07/03/2013	4
HO 8F	Office Treatment Records		AnMed Health Family Medicine Center	11/27/2012 to 07/17/2013	86
HO 9F	Physical/Occupational Therapy Records		Upstate Physical Therapy	11/27/2012 to 08/21/2013	8
HO 10F	Office Treatment Records		AnMed Health Urology	05/08/2013 to 08/23/2013	11

HO 11F	Progress Notes	Piedmont Comprehensive Pain Management Group	07/16/2013 to 09/11/2013	13
HO 12F	Emergency Department Records	AnMed Medical Center	06/01/2013 to 10/30/2013	48
HO 13F	Progress Notes	Carol Burnette, MD/Piedmont Pain Management Group	07/16/2013 to 12/13/2013	14
HO 14F	Office Treatment Records	AnMed Health Family Medicine Center	12/20/2012 to 01/30/2014	118
HO 15F	Office Treatment Records	L T Sumner, DMD	01/13/2014 to 05/29/2014	7
HO 16F	Office Treatment Records	Medicus Eye Group	05/14/2013 to 06/24/2014	45
HO 17F	Office Treatment Records	AnMed Health Vascular Medicine	04/05/2013 to 08/07/2014	88
HO 18F	Office Treatment Records	DentNow	11/04/2013 to 08/27/2014	3
HO 19F	Office Treatment Records	Wren Family Medicine/Kimberly Kyker, MD	05/12/2014 to 10/15/2014	51
HO 20F	Office Treatment Records	AnMed Health Vascular Medicine	08/07/2014 to 10/25/2014	86
HO 21F	Hospital Records	AnMed Health Medical Center	04/29/2013 to 10/26/2014	237
HO 22F	Office Treatment Records	Nephrology & IM/Anthony Joseph, MD	09/24/2014 to 11/13/2014	29
HO 23F	Office Treatment Records	AnMed Health Family Medicine Center	08/19/2013 to 11/20/2014	85

HO 24F	Office Treatment Records	Anmed Family Medicine/Jared Richardson, MD	11/27/2012 to 11/20/2014	50
HO 25F	Office Treatment Records	AnMed Family Medicine/Jared Richardson, MD	11/27/2012 to 11/20/2014	59
HO 26F	Office Treatment Records	Anmed Family Medicine/Jared Richardson, MD	11/27/2012 to 11/20/2014	24
HO 27F	Office Treatment Records	Anmed Family Medicine/Jared Richardson, MD	11/27/2012 to 11/20/2014	39
HO 28F	Office Treatment Records	AnMed Health Vascular Medicine	10/25/2014 to 11/22/2014	71
HO 29F	Hospital Records	AnMed Vascular Medicine/Jen Thomas, MD	04/05/2013 to 11/22/2014	98
HO 30F	Hospital Records	AnMed Vascular Medicine/Jen Thomas, MD	04/05/2013 to 11/22/2014	100
HO 31F	Hospital Records	AnMed Vascular Medicine/Jen Thomas, MD	04/05/2013 to 11/22/2014	65
HO 32F	Office Treatment Records	Anmed Family Medical/Jared Richardson, MD	04/05/2013 to 11/22/2014	24
HO 33F	Office Treatment Records	Aathirayen Thiyaga, MD Spine & Pain Center	10/08/2014 to 12/03/2014	11
HO 34F	Office Treatment Records	Aathirayen Thiyaga, MD	to 01/28/2015	4
HO 35F	Office Treatment Records	William Hinnant, MD/Anderson Urology Associates	11/14/2014 to 01/29/2015	25
HO 36F	Office Treatment Records	Nephrology & Internal Medicine	to 02/06/2015	3
HO 37F	Office Treatment Records	Wren Family Medicine	to 04/14/2015	9

HO 38F	Medical Evidence of Record	Carol Burnette, MD	12/13/2013 to 05/11/2015	21
HO 39F	Office Treatment Records	Piedmont Comp Pain Management/Carol Burnette, MD	07/16/2013 to 05/11/2015	36
HO 40F	Medical Expert Resume	Christopher Clemow, MD	to 06/06/2015	1
HO 41F	Medical Expert Resume	Jennifer Thomas, MD	to 06/06/2015	1
HO 42F	Medical Expert Resume	Jared Richardson, MD	to 06/06/2015	1
HO 43F	Medical Expert Resume	James Huff, MD	to 06/06/2015	1
HO 44F	Medical Expert Resume	Aaron MacDonald, MD	to 06/06/2015	1
HO 45F	Medical Expert Resume	Anthony Joseph, MD	to 06/06/2015	1
HO 46F	Medical Expert Resume	Carol Burnette, MD	to 06/06/2015	1
HO 47F	Emergency Department Records	GHS-Laurens County Memorial Hospital (atty submitted)	to 09/15/2015	12
HO 48F	Office Treatment Records	Ridgland Correctional Intitution	08/16/2016 to 07/18/2017	56

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The Honorable Jenny Abott Kitchings
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