[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 23-14073

Non-Argument Calendar

RITA ARGUIJO GARCIA,

Plaintiff-Appellant,

versus

COMMISSIONER OF SOCIAL SECURITY,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:22-cv-02175-AEP

Before JORDAN, ROSENBAUM, and ABUDU, Circuit Judges.

PER CURIAM:

Rita Arguijo Garcia appeals the district court's order affirming the decision of the Commissioner of the Social Security Administration denying her claim for benefits. Ms. Arguijo Garcia appeared before an administrative law judge who denied her application after finding that she was not disabled. She then filed a request for review with the Appeals Council, which denied her request and did not provide for a protective filing date relating back to her original application for benefits. On appeal, Ms. Arguijo Garcia argues that Social Security Ruling 11-1p, one of the SSA's regulations, is unconstitutional because it denies claimants equal protection under the law as guaranteed by the Fifth Amendment. The problem, she says, is that Ruling 11-1p provides for a protective filing date to some claimants but not others. Because Ruling 11-1p has a rational basis, we affirm.

I

Ms. Arguijo Garcia applied for a period of disability, disability insurance benefits, and supplemental security income on December 31, 2019, alleging disabling conditions that made her unable to work. As part of her application, she stated that her date of birth was May 31, 1967. The SSA denied her application both on initial review and following a request for review.

On October 7, 2021, an administrative law judge held a hearing on Ms. Arguijo Garcia's application. The ALJ issued his

decision on November 12, 2021, and found that Ms. Arguijo Garcia was not disabled under the Medical-Vocational Rules, which made her ineligible for the benefits she had requested. Ms. Arguijo Garcia then requested review of the ALJ's decision before the Appeals Council. She attached a letter from her attorney stating that she would turn 55-years-old in a few months and be deemed disabled. The Appeals Council denied Ms. Arguijo Garcia's request for review, finding no grounds that would warrant a departure from the ALJ's decision.

Ms. Arguijo Garcia filed a complaint in district court seeking review of the Commissioner's decision. She asserted that the Appeals Council erred in determining that she was not entitled to a protective filing date relating back to the date of her initial application. Ms. Arguijo Garcia alleged that Social Security Ruling 11-1p, which sets out procedures and requirements when a request for review is filed before the Appeals Council, violates her right to equal protection because it denies claimants who do not possess new and irrelevant evidence to obtain a protective filing date while allowing claimants to receive a protective filing date if they submit new but irrelevant evidence. The district court affirmed the SSA's decision, concluding that Ms. Arguijo Garcia was not entitled to a protective filing date and her equal protection challenge lacked merit Ms. Arguijo Garcia now appeals.

II

This appeal involves a challenge to SSA Ruling 11-1p, so we begin by discussing its history. In 2011, the SSA revised its

procedure for processing subsequent disability claims. *See* Procedures for Handling Requests to File Subsequent Applications for Disability Benefits, SSR 11-1p, 76 Fed. Reg. 45,309-03, 45,310 (July 28, 2011). From 1999 to 2011, claimants were permitted to file a subsequent disability claim while a prior disability claim was pending review by the Appeals Council, such that two applications for disability benefits could be pending at the same time. *See id.* The SSA observed that the ability for simultaneous review, paired with an increasing number of subsequent disability claims, could lead to conflicting and potentially irreconcilable decisions on claims for benefits. *See id.* The SSA also noted that subsequent claims could result in improper payments, increased administrative costs, and unnecessary workloads because of duplicated efforts. Due to those concerns, the SSA implemented the new procedures adopted in Ruling 11-1p. *See id.*

Ruling 11-1p provides that a claimant is generally not allowed to have two claims for the same type of benefits pending at the same time. *See id.* Claimants with a new disability claim can either pursue an appeal or start a new application but are no longer allowed to do both simultaneously. *See id.* A claimant is not precluded, however, from reporting new medical conditions or a worsening in her existing medical conditions, and she may submit any information or evidence that she feels is helpful to her pending disability claim. *See id.*; *Washington v. Soc. Sec. Admin., Comm'r*, 806 F.3d 1317, 1320 (11th Cir. 2015).

Upon receipt of new information, the Appeals Council evaluates the following: (1) whether the evidence submitted by the claimant relates to the period before or after the date of the ALJ's decision, *see* SSR 11-1p, 76 Fed. Reg. at 45,310; 20 C.F.R. §§ 404.970(a)(5), 416.1470(a)(5); and (2) whether the evidence is new and material, and relates to the date before the ALJ decision, *see* SSR 11-1p, 76 Fed. Reg. at 45,311; 20 C.F.R. §§ 404.970(c), 416.1470(c). If the evidence relates to the period on or before the date of the ALJ's decision and is new and material, then it will be considered with the record previously provided for adjudication by the Appeals Council. If the new and material evidence relates to the period after the ALJ decision, however, the evidence will be returned to the claimant with a notice explaining why it was rejected. When the evidence is returned to the claimant, the SSA will also provide a protective filing date that establishes the date of the claimant's request for review as the filing date for her new claim. *See* SSR 11-1p, 76 Fed. Reg. at 45,311; 20 C.F.R. §§ 404.970(c), 416.1470(c).[1]

III

We review *de novo* the application of legal principles by the ALJ and the district court, but with respect to facts we only review

---

[1] The SSA defines "protective filing date" as the date the claimant first contacts the agency about filing for benefits and indicates that such date may be used to establish an earlier application date than when the SSA receives the claimant's signed application. *See Glossary of Soc. Sec. Terms*, Soc. Sec. Admin., https://www.ssa.gov/agency/glossary (last visited Mar. 31, 2025).

whether the ALJ's resulting decision is supported by substantial evidence. *See Henry v. Comm'r of Soc. Sec.*, 802 F.3d 1264, 1266–67 (11th Cir. 2015). We also review *de novo* a constitutional challenge to an administrative rule or regulation. *See Crayton v. Callahan*, 120 F.3d 1217, 1220 (11th Cir. 1997).

IV

Ms. Arguijo Garcia contends that Ruling 11-1p violates the Fifth Amendment's guarantee to equal protection. She argues that Ruling 11-1p treats claimants more favorably when they submit additional evidence that is ultimately deemed chronologically irrelevant as compared to those who do not possess such evidence to submit along with a request for review before the Appeals Council.

The Fifth Amendment provides that no one shall be "deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. The Supreme Court has interpreted the Fifth Amendment's due process guarantee to include preventing the federal government from denying individuals equal protection under the laws. *See Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975) (citing cases). Equal protection claims under the Fifth Amendment are analyzed under the same standards established for equal protection claims under the Fourteenth Amendment. *See id.*; *Sessions v. Morales-Santana*, 582 U.S. 47, 52 n.1 (2017). As a result, the federal government must treat "similarly situated persons in a similar manner." *Leib v. Hillsborough Cnty. Pub. Transp. Comm'n*, 558 F.3d 1301, 1306 (11th Cir. 2009).

Should a statute or regulation "classif[y] persons in such a way that they receive different treatment under the law, the degree of scrutiny the court applies depends upon the basis of the classification." *Morales-Santana*, 582 U.S. at 52 n.1 (internal quotation marks omitted). Unless the classification is made on the basis of race, another suspect classification, or impinges on a fundamental right, it "need only have a rational basis" to comply with the Fifth Amendment guarantee to equal protection. *Id.* In such a case we review whether the statute or regulation is "rationally related to a legitimate government purpose." *Id.*

Another panel of this court has assessed whether Ruling 11-1p violates equal protection principles under rational basis review in *Williams v. Commissioner of Social Security*, No. 21-10920, 2022 WL 791711 (11th Cir. Mar. 16, 2022). Though *Williams* does not bind us, we find its reasoning persuasive because it thoroughly addressed the same constitutional question under near identical facts.[2]

In *Williams*, the claimant similarly applied for Social Security benefits and included her date of birth on her application, which established she was 52 years old. *See id.* at *3. After a hearing, the ALJ found she was not disabled, in part considering her age as "an

[2] As in *Williams*, Ms. Arguijo Garcia submitted a letter from her attorney along with her request for review before the Appeals Council explaining that her age would be used to deem her disabled. And, as in *Williams*, Ms. Arguijo Garcia's date of birth was already submitted with her application for benefits prior to the date of the ALJ's decision.

individual closely approaching advanced age[.]" *Id.* The claimant then appealed and included a letter from her attorney stating that she would turn 55-years-old in three months, which would qualify her as disabled. *See id.* at *4. The Appeals Council denied her request for review and did not provide a protective filing date. *See id.* The claimant subsequently filed suit, arguing that SSR 11-1p is unconstitutional based on the difference in how "the SSA treated claimants who submitted additional evidence to the Appeals Council that was deemed to be not chronologically relevant to those claimants who submitted no additional evidence." *Id.*

Applying rational basis review, the *Williams* panel found "a rational relationship between this disparate treatment and a legitimate government purpose." *Id.* at *8. It reasoned that while a claimant may sometimes know that additional evidence relates only to the period following the date of the ALJ's decision and would not be considered by the Appeals Council, at other times it may not be apparent to a claimant whether the evidence is in fact chronologically relevant such that the Appeals Council would need to determine its relevance. *See id.* In such cases, the panel explained that it would be reasonable for the SSA to allow those claimants "to have the benefit of a protective filing date." *Id.*

We are persuaded by the panel's reasoning in *Williams* and adopt its analysis as we evaluate Ruling 11-1p under rational basis review in this appeal. Because there is a rational relationship between the disparate treatment of these claimants—individuals who submit additional evidence that may not be chronologically

relevant and individuals who do not possess chronologically irrelevant evidence to submit as additional evidence with a request for review before the Appeals Council—and the SSA's administration of its government benefits program, there is a rational basis for Ruling 11-1p.

Ms. Arguijo Garcia has failed to carry her burden "to negate every conceivable basis" that might support Ruling 11-1p. *Leib*, 558 F.3d at 1306. Ruling 11-1p therefore does not violate the Fifth Amendment's guarantee to equal protection. *See Eknes-Tucker v. Governor of Ala.*, 80 F.4th 1203, 1220 (11th Cir. 2023) (en banc), *cert. dismissed sub nom. United States v. Att'y Gen. of Ala.*, No. 24-582, 2025 WL 559729 (U.S. Feb. 19, 2025) (explaining that rational basis review is highly deferential to government action).

IV

For the reasons discussed above, we affirm the judgment of the district court.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

April 14, 2025

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 23-14073-HH
Case Style: Rita Arguijo Garcia v. Commissioner of Social Security
District Court Docket No: 8:22-cv-02175-AEP

Opinion Issued
Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing
The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing. Among other things, **a petition for rehearing must include a Certificate of Interested Persons**. See 11th Cir. R. 40-3.

Costs
No costs are taxed.

Bill of Costs
If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees
The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel
Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

OPIN-1 Ntc of Issuance of Opinion

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RITA ARGUIJO GARCIA,

Plaintiff,

v. Case No. 8:22-cv-2175-AEP

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,

Defendant.
_____/

ORDER

Plaintiff seeks judicial review of the denial of her claim for a period of disability, disability insurance benefits ("DIB"), and Supplemental Security Income ("SSI"). As the Administrative Law Judge's ("ALJ") decision was based on substantial evidence and employed proper legal standards, the Commissioner's decision is affirmed.

I.

A. Procedural Background

Plaintiff filed an application for a period of disability, DIB, and SSI (Tr. 306-12, 313-20). The Social Security Administration ("SSA") denied Plaintiff's claims both initially and upon reconsideration (Tr. 57-71, 72-86, 91-111, 112-32). Plaintiff then requested an administrative hearing (Tr. 196-97). Per Plaintiff's request, the ALJ held a hearing at which Plaintiff appeared and testified (Tr. 37-56). Following the hearing, the ALJ issued an unfavorable decision finding Plaintiff not disabled

and accordingly denied Plaintiff's claims for benefits (Tr. 13-26). Subsequently, Plaintiff requested review from the Appeals Council, which the Appeals Council denied (Tr. 1-8). Plaintiff then timely filed a complaint with this Court (Doc. 1). The case is now ripe for review under 42 U.S.C. §§ 405(g), 1383(c)(3).

B. Factual Background and the ALJ's Decision

Plaintiff, who was born in 1967, claimed disability beginning on December 31, 2019 (Tr. 57, 72, 87-88). Plaintiff has at least an eleventh-grade education (Tr. 349). Plaintiff has past work experience making deliveries and being a "trash picker" in the construction industry and also working as a sandwich maker in the fast-food industry (Tr. 349). Plaintiff alleged disability due to sciatica, sleep apnea, asthma, high blood pressure, cholesterol, muscular pain, memory problems, depression, migraines, stomach problems, vertigo, and arm problems (Tr. 348).

In rendering the administrative decision, the ALJ concluded that Plaintiff met the insured status requirements through December 31, 2024 and had not engaged in substantial gainful activity since December 31, 2019, the alleged onset date (Tr. 21). After conducting a hearing and reviewing the evidence of record, the ALJ determined Plaintiff had the following severe impairments: degenerative disc disease of the lumbar spine, lumbar radiculopathy, degenerative disc disease of the cervical spine, cervical radiculopathy, osteoarthritis of the left acromioclavicular joint, left rotator cuff tear, status post decompression and repair, adhesive capsulitis of the left shoulder, history of right rotator cuff tear, status post repair, asthma, migraine, and obesity (Tr. 22). Notwithstanding the noted impairments, the ALJ

determined Plaintiff did not have an impairment or combination of impairments that met or medically equaled one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (Tr. 23). The ALJ then concluded that Plaintiff retained a residual functional capacity ("RFC") to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b) except the claimant can stand/walk 6 total hours in an 8-hour workday; sit 6 total hours; never climb ladders, ropes, or scaffolds, occasionally climb ramps and stairs, balance, stoop, kneel, crouch, and crawl; occasionally reach overhead bilaterally; must avoid concentrated exposure to extreme cold, extreme heat, wetness, humidity, vibration, hazards, and fumes, odors, dusts, gases, and other pulmonary irritants; and can have no exposure to loud or very loud noise (Tr. 24). In formulating Plaintiff's RFC, the ALJ considered Plaintiff's subjective complaints and determined that, although the evidence established the presence of underlying impairments that reasonably could be expected to produce the symptoms alleged, Plaintiff's statements as to the intensity, persistence, and limiting effects of her symptoms were not entirely consistent with the medical evidence and other evidence (Tr. 25).

Given Plaintiff's background, RFC, and the assessment of a vocational expert ("VE"), the ALJ determined that Plaintiff can perform her past relevant work as a fast-food worker as generally performed (Tr. 27-28). Additionally, based on the VE's testimony, the ALJ found that there are other jobs which exist in significant numbers in the national economy that Plaintiff can perform, such as mail sorter, router, and cashier II (Tr. 28). Accordingly, based on Plaintiff's age, education,

work experience, RFC, and the VE's testimony, the ALJ found Plaintiff not disabled (Tr. 29).

II.

To be entitled to benefits, a claimant must be disabled, meaning he or she must be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities, which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 42 U.S.C. §§ 423(d)(3), 1382c(a)(3)(D).

To regularize the adjudicative process, the SSA promulgated the detailed regulations currently in effect. These regulations establish a "sequential evaluation process" to determine whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920. If an individual is found disabled at any point in the sequential review, further inquiry is unnecessary. 20 C.F.R. §§ 404.1520(a), 416.920(a). Under this process, the ALJ must determine, in sequence, the following: (1) whether the claimant is currently engaged in substantial gainful activity; (2) whether the claimant has a severe impairment, *i.e.*, one that significantly limits the ability to perform work-related functions; (3) whether the severe impairment meets or equals the medical criteria of 20 C.F.R. Part 404 Subpart P, Appendix 1; and (4) whether

the claimant can perform his or her past relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If the claimant cannot perform the tasks required of his or her prior work, step five of the evaluation requires the ALJ to decide if the claimant can do other work in the national economy in view of his or her age, education, and work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). A claimant is entitled to benefits only if unable to perform other work. *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987); 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

The ALJ, in part, decides Plaintiff's claim pursuant to regulations designed to incorporate vocational factors into the consideration of disability claims. *See* 20 C.F.R. §§ 404.1501, *et seq.* These regulations apply in cases where an individual's medical condition is severe enough to prevent him from returning to his former employment but may not be severe enough to prevent him from engaging in other substantial gainful activity. In such cases, the Regulations direct that an individual's residual functional capacity, age, education, and work experience be considered in determining whether the claimant is disabled. These factors are codified in tables of rules that are appended to the regulations and are commonly referred to as "the grids." 20 C.F.R. Part 404, Subpart P, App. 2. If an individual's situation coincides with the criteria listed in a rule, that rule directs a conclusion as to whether the individual is disabled. 20 C.F.R. §§ 404.1569, 416.969. If an individual's situation varies from the criteria listed in a rule, the rule is not conclusive as to an individual's disability but is advisory only. 20 C.F.R. §§ 404.1569a, 416.969a.

A determination by the ALJ that a claimant is not disabled must be upheld if it is supported by substantial evidence and comports with applicable legal standards. *See* 42 U.S.C. §§ 405(g), 1383(c)(3). "Substantial evidence is more than a scintilla and is such relevant evidence as a reasonable person would accept as adequate to support a conclusion." *Winschel v. Comm'r of Soc. Sec.*, 631 F.3d 1176, 1178 (11th Cir. 2011) (citation and internal quotation marks omitted). While the court reviews the Commissioner's decision with deference to the factual findings, no such deference is given to the legal conclusions. *Ingram v. Comm'r of Soc. Sec.*, 496 F.3d 1253, 1260 (11th Cir. 2007) (citations omitted).

In reviewing the ALJ's decision, the court may not reweigh the evidence or substitute its own judgment for that of the ALJ, even if it finds that the evidence preponderates against the ALJ's decision. *Winschel*, 631 F.3d at 1178 (citations omitted); *Bloodsworth v. Heckler*, 703 F.2d 1233, 1239 (11th Cir. 1983). The ALJ's failure to apply the correct law, or to give the reviewing court sufficient reasoning for determining that he or she has conducted the proper legal analysis, mandates reversal. *Ingram*, 496 F.3d at 1260 (citation omitted). The scope of review is thus limited to determining whether the findings of the ALJ are supported by substantial evidence and whether the correct legal standards were applied. 42 U.S.C. § 405(g); *Wilson v. Barnhart*, 284 F.3d 1219, 1221 (11th Cir. 2002) (per curiam) (citations omitted).

III.

Plaintiff argues that the ALJ erred by finding that Plaintiff could perform her past relevant work as a fast-food worker because her past work more accurately corresponds with the job of "fast-food cook." Additionally, Plaintiff argues that the Appeals Council erred by failing to find that she was entitled to a protective filing date as of the date she submitted her request for review and challenges the constitutionality of Social Security Ruling 11-1p and 20 C.F.R. § 416.1470(c). For the following reasons, the ALJ applied the correct legal standards, and the Appeals Council's decision was consistent with the relevant SSA regulation, which has a rational basis.

A. Past Relevant Work as a Fast-Food Worker

Plaintiff argues that the DOT occupation, fast-food worker, which was cited by the VE and the ALJ does not encompass the work she performed and contends that her past work more properly comports with work as a fast-food cook. According to Plaintiff, if her past work was classified as a fast-food cook rather than as a fast-food worker, Plaintiff could not perform such work as it is generally performed or as she actually performed the work.

At step four of the sequential evaluation process, the ALJ assesses the claimant's RFC and ability to perform past relevant work. *See* 20 C.F.R. §§ 404.1520(a)(4)(iv), 404.1545, 416.920(a)(4)(iv), 416.945. Past relevant work consists of work a claimant performed "within the last 15 years, lasted long enough for [the claimant] to learn to do it, and was substantial gainful activity." 20 C.F.R.

§§ 404.1565(a), 416.965(a). The claimant bears the burden of proving that his or her impairments prevent the performance of past relevant work. *Doughty v. Apfel*, 245 F.3d 1274, 1278 (11th Cir. 2001); *cf. Moore v. Barnhart*, 405 F.3d 1208, 1211 (11th Cir. 2005) (noting that the regulations "place a very heavy burden on the claimant to demonstrate both a qualifying disability and an inability to perform past relevant work") (citation omitted). Additionally, the claimant bears the burden of demonstrating that his or her past work experience does not constitute past relevant work. *Waldrop v. Comm'r of Soc. Sec.*, 379 F. App'x 948, 953 (11th Cir. 2010) (citing *Barnes v. Sullivan*, 932 F.3d 1356, 1359 (11th Cir. 1991)).[1] In considering past relevant work, a finding of "not disabled" is warranted where a claimant retains the RFC to perform (1) the actual functional demands and job duties of a particular past relevant job; or (2) the functional demands and job duties of the occupation as generally required by employers throughout the national economy. Social Security Ruling 82-62 ("SSR 82-62"), 1982 WL 31387, at *2 (Jan. 1, 1982). Stated differently, "[a] claimant is not disabled if she is able to perform her past work either as she actually performed it or as it is generally performed in the national economy." *Fries v. Comm'r of Soc. Sec. Admin.*, 196 F. App'x 827, 832 (11th Cir. 2006) (citation omitted). "The regulations require that the claimant not be able to perform his past *kind* of work, not that he merely be unable to perform a specific job he held in the past." *Jackson v. Bowen*, 801 F.2d 1291, 1293 (11th Cir. 1986) (emphasis in original;

[1] Unpublished opinions are not considered binding precedent but may be cited as persuasive authority. 11th Cir. R. 36-2.

citations omitted). Accordingly, a claimant needs to demonstrate that he or she cannot return to his or her former *type* of work rather than to a specific prior job. *Id.* (citations omitted). The regulations anticipate the ALJ's reliance on the VE for his or her knowledge and expertise and explicitly state a "vocational expert or specialist may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, either as the claimant actually performed it or as generally performed in the national economy." 20 C.F.R. §§ 404.1560(b)(2), 416.960(b)(2).

There are several issues with Plaintiff's argument. First, Plaintiff did not challenge the VE's alleged misclassification of her part work as a fast-food worker. A number of courts have found that a claimant's failure to raise an argument before the ALJ relative to her past relevant work forecloses such a contention on appeal. *See e.g., Vickery v. Comm'r of Soc. Sec.*, No. 5:21-CV-122-PRL, 2022 WL 16555990, at *3 (M.D. Fla. Sept. 23, 2022) (finding that the ALJ was not obligated to further investigate whether the plaintiff's job as a real estate agent was past relevant work because the plaintiff did not object or otherwise raise the issue to the ALJ at the hearing); *New v. Comm'r of Soc. Sec.*, No. 5:12-CV-211-OC-18PRL, 2013 WL 3804846, at *3 (M.D. Fla. July 8, 2013) ("As an initial matter, the Commissioner correctly notes that the Plaintiff did not raise this issue to the ALJ, nor did her attorney object to the VE's testimony identifying Plaintiff's prior work as a housekeeper as past relevant work. Unfortunately for Plaintiff, because she failed to raise this issue to the ALJ or even object to the VE's testimony, the ALJ was not

obligated to specifically address the concerns—or rather, arguments—that Plaintiff now raises."); *Whittemore v. Comm'r of Soc. Sec.*, No. 3:09-CV-1242-J-MCR, 2011 WL 722966, at *5 (M.D. Fla. Feb. 23, 2011) (finding that where the plaintiff did not raise the issue to the ALJ as to whether her prior job as a real estate agent qualified as substantial gainful activity and did not object to the VE's "past relevant work summary," which included the job of real estate agent, that the ALJ was not required to specifically discuss his reasons for concluding that the plaintiff's past work as a real estate agent qualified as substantial gainful activity). Here, Plaintiff, who was represented by counsel at the hearing, failed to ask any questions of the VE when given the opportunity and did not raise any concerns to the ALJ regarding the classification of her past work (*see* Tr. 51-56).

The second issue with Plaintiff's argument is that the record reflects that there was sufficient information about the demands of Plaintiff's past work for the ALJ to determine that Plaintiff could perform her past work as a fast-food worker.

The DOT describes the position of a fast-food worker as follows:

> Serves customer of fast food restaurant: Requests customer order and depresses keys of multicounting machine to simultaneously record order and compute bill. Selects requested food items from serving or storage areas and assembles items on serving tray or in takeout bag. Notifies kitchen personnel of shortages or special orders. Serves cold drinks, using drink-dispensing machine, or frozen milk drinks or desserts, using milkshake or frozen custard machine. Makes and serves hot beverages, using automatic water heater or coffeemaker. Presses lids onto beverages and places beverages on serving tray or in takeout container. Receives payment. May cook or apportion french fries or perform other minor duties to prepare food, serve customers, or maintain orderly eating or serving areas.

DOT § 311.472-010, 1991 WL 672682. The fast-food worker position is rated as light work, occasionally exerting up to twenty pounds and frequently exerting up to ten pounds to move objects. *Id.* "Even though the weight lifted may be only a negligible amount, a job should be rated Light Work . . . when it requires walking or standing to a significant degree." *Id.* The DOT describes the position of fast-food cook as follows:

> Prepares and cooks to order foods requiring short preparation time: Reads food order slip or receives verbal instructions as to food required by patron, and prepares and cooks food according to instructions. Prepares sandwiches [SANDWICH MAKER (hotel & rest.) 317.664-010]. Prepares salads and slices meats and cheese, using slicing machine, [PANTRY GOODS MAKER (hotel & rest.) 317.684-014]. Cleans work area and food preparation equipment. May prepare beverages [COFFEE MAKER (hotel & rest.) 317.684-010]. May serve meals to patrons over counter.

DOT § 313.374-010, 1991 WL 672716. The fast-food cook position is rated as medium work, occasionally exerting twenty to fifty pounds, and frequently exerting ten to twenty-five pounds to move objects. *Id.*

Based upon Plaintiff's work history report and the DOT, the ALJ properly determined that Plaintiff's past relevant work was that of a fast-food worker. The ALJ considered Plaintiff's work history report, Plaintiff's testimony regarding her past work, and the VE's assessment of the past work. In her work history report, Plaintiff noted that she worked in food prep at McDonalds (Tr. 391). When asked to describe her job, she wrote "I was making the food prep. I would stock when running low of supply" (Tr. 391). Plaintiff also noted that she did not use machines, tools, or equipment, or use any technical knowledge or skills (Tr. 391). Moreover,

Plaintiff reported standing six hours in a workday and having to handle, grab, or grasp large objects for six hours in a workday (Tr. 391). Plaintiff also noted that she lifted and carried boxes from the freezer every couple of days and the heaviest weight she lifted was twenty pounds and the weight she frequently lifted was ten pounds (Tr. 391). At the hearing, when the ALJ asked her if she was mostly doing food prep, Plaintiff agreed (Tr. 42). Plaintiff testified that that she would go in the stock room and get new supplies if food was running low, including going into the freezer to bring out boxes of potatoes (Tr. 42). The VE testified that Plaintiff's past work classified as fast-food worker which was light work as described and as performed (Tr. 51). Given Plaintiff's lifting, walking, and standing patterns, in addition to her responsibilities, the job of fast-food worker adequately reflects the nature of Plaintiff's occupation. *See McCook v. Aetna Life Ins. Co.*, No. 3:17-CV-823, 2018 WL 6983618 at *19 (M.D. Fla. Nov. 14, 2018) (citation and quotation marks omitted) ("A DOT occupation is appropriately analogous if it involves duties that are comparable to those of the claimant's occupation, but not necessarily every duty.")

Plaintiff makes no showing, however, that the ALJ did not develop the record as to the physical requirements, demands, and duties of the Plaintiff's former job as she actually performed it. *See Waldrop*, 379 F. App'x at 953. Plaintiff also fails to demonstrate that the ALJ's characterization of Plaintiff's past work based upon her administrative filings, her hearing testimony, and the VE's assessment is unsupported by substantial evidence. Rather, she asserts that there is a different

classification that better describes her role. As a result, the Court is unpersuaded by Plaintiff's contention that the ALJ (or the VE) misclassified the Plaintiff's past work in the fast-food industry. It is, after all, not the function of this Court to reweigh the evidence upon review. *See Winschel*, 631 F.3d at 1178.

Plaintiff also argues that if the ALJ had classified her past work as a fast-food cook and found that she was unable to perform that work, and because she was only a few months short of her 55th birthday, there is a reasonable possibility that the ALJ would have declined to mechanically apply the Grids and treat Plaintiff as if she was already 55 years old and approve her claim. Plaintiff's argument is filled with assumption this Court cannot make.

As previously stated, at step four of the sequential evaluation process, the ALJ assesses the claimant's RFC and ability to perform past relevant work. *See* 20 C.F.R. §§ 404.1520(a)(4)(iv), 404.1545, 416.920(a)(4)(iv), 416.945. If the claimant can return to her past relevant work, the ALJ will conclude that the claimant is not disabled. 20 C.F.R. § 404.1520(a)(4)(iv) & (f), 416.920(a)(4)(iv) & (f). At this step, the claimant bears the burden of proving that his or her impairments prevent him or her from performing past relevant work. *Doughty*, 245 F.3d at 1278. If the claimant cannot perform her past relevant work, the ALJ moves on to step five of the evaluation, which requires the ALJ to decide if the claimant can do other work in the national economy in view of her age, education, and work experience. 20 C.F.R. § 404.1520(a)(4)(v), 416.920(a)(4)(v).

Here, not only did the ALJ conclude that Plaintiff was able to perform her past relevant work as a fast-food worker, but the ALJ made an alternate fining at step five that Plaintiff could perform work as a mail sorter, router, and cashier (Tr. 28). Plaintiff does not challenge the ALJ's alternate finding. *See Frizzio v. Astrueas*, No. 6:11-cv-1318-Orl-31TEM, 2012 WL 3668049 (M.D. Fla. Aug. 7, 2012) ("When an ALJ has committed error at step four, it may be harmless error if her alternative finding at step five is correct.").

Moreover, Plaintiff argues that if the ALJ would have found that she could not perform her past relevant work and treated her as if she was already 55, the Grids would direct a finding of disabled. However, the ALJ could not have relied exclusively on the Grids at step five to find her disabled. At step five, the ALJ must consider the assessment of the RFC combined with the claimant's age, education, and work experience to determine whether the claimant can make an adjustment to other work. *Phillips v. Barnhart*, 357 F.3d 1232, 1239 (11th Cir. 2004); 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). If the claimant can make an adjustment to other work, a finding of not disabled is warranted. *Phillips*, 357 F.3d at 1239. Conversely, if the claimant cannot make an adjustment to other work, a finding of disabled is warranted. *Id.* At this step, the burden temporarily shifts to the Commissioner to show other jobs exist in significant numbers in the national economy which, given the claimant's impairments, the claimant can perform. *See Washington v. Comm'r of Soc. Sec.*, 906 F.3d 1353, 1359 (11th Cir. 2018); *Foote v. Chater,* 67 F.3d 1553, 1559 (11th Cir. 1995).; 20 C.F.R. § 404.1520(a)(4)(v). "The ALJ must articulate specific

jobs that the claimant is able to perform, and this finding must be supported by substantial evidence, not mere intuition or conjecture." *Wilson*, 284 F.3d at 1227 (citation omitted). There are two avenues by which an ALJ may determine a claimant's ability to adjust to other work in the national economy: namely, by applying the Grids and by using a VE. *Phillips*, 357 F.3d at 1239-40. Typically, where the claimant cannot perform a full range of work at a given level of exertion or where the claimant has non-exertional impairments that significantly limit basic work skills, the ALJ must consult a VE. *Id.* at 1242; *see also Walker v. Bowen,* 826 F.2d 996, 1002-03 (11th Cir. 1987) (quotation omitted) ("Exclusive reliance on the grids is not appropriate either when [a] claimant is unable to perform a full range of work at a given functional level or when a claimant has non-exertional impairments that significantly limit basic work skills."). However, when both exertional and non-exertional impairments exist, the Grids may still be applicable. *Sryock v. Heckler*, 764 F.2d 834, 836 (11th Cir. 1985) (per curiam). Where the ALJ considers the non-exertional limitations, the ALJ need only determine whether the non-exertional limitations significantly limit the claimant's basic work skills, meaning that the claimant has limitations that prohibit him or her from performing "a wide range" of work at a given level. *Phillips*, 357 F.3d at 1243 (emphasis in original); *see also Sryock*, 764 F.2d at 836 (citations and quotation marks omitted) ("[N]on-exertional limitations can cause the grid to be inapplicable only when the limitations are severe enough to prevent a wide range of gainful employment at the designated level."). If the ALJ determines that a claimant's non-exertional limitations do not significantly

limit his or her basic work skills at a specific work level, the ALJ may rely on the Grids in determining whether the claimant is disabled. *Phillips*, 357 F.3d at 1243;

In the instant case, the ALJ noted that if Plaintiff had the RFC to perform the full range of light work, a finding of "not disabled" would be directed by Grid rule 202.10 (Tr. 28). However, the ALJ specifically found that Plaintiff's ability to perform all or substantially all of the requirements of this level of work has been impeded by additional limitations (Tr. 28). "To determine the extent to which these limitations erode the unskilled light occupational base," the ALJ asked the VE whether jobs exist in the national economy for an individual with Plaintiff's age, education, work experience, and RFC (Tr. 28). The VE testified that Plaintiff was able to perform the work of a mail sorter, router, and cashier (Tr. 28). The ALJ concluded that considering the Plaintiff's age, education, work experience, and RFC, the claimant was capable of making a successful adjustment to other work that exists in significant numbers in the national economy (Tr. 29).

The ALJ correctly applied the law. At step five of the sequential evaluation process, the ALJ determined that, although the Grids would ordinarily support a finding of "not disabled" in Plaintiff's case, the ALJ needed to utilize the VE's testimony to establish whether a significant number of jobs existed for Plaintiff in the national economy because Plaintiff's ability to perform all or substantially all of the requirements of light work was impeded by her limitations. Plaintiff does not challenge the ALJ's factual findings with regard to her RFC or the conclusion that she could not perform a full range of light work, or argue that she is unable to

perform her past relevant work as a fast-food worker. Given the VE's testimony that there existed three types of jobs in significant numbers in the national economy that a person with Plaintiff's RFC could perform, substantial evidence supports the ALJ's conclusion that, because the Commissioner met its burden at step five, Plaintiff did not demonstrate that she was disabled.

B. SSR 11-1P

Plaintiff argues that Social Security Ruling 11-1p violates the equal protection clause to the United States Constitution, and that the Appeals Council should have included in their decision an order that if Plaintiff made a new application for SSI within 60 days, the date of the Request for Review would be deemed a protective filing date for a new application.

The Equal Protection Clause directs that no state will "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amdt. 14 § 1. Plaintiff concedes that because she does not claim to be a member of a suspect class or allege a burden on one of her fundamental rights, the constitutional inquiry falls within rational-basis review. *See Leib v. Hillsborough Cnty. Pub. Transp. Comm'n*, 558 F.3d 1301, 1306 (11th Cir. 2009). Under rational-basis review, a statute or regulation that classifies persons in such a way that they receive different treatment under the law is permitted so long as there is a "rational relationship between the disparity of treatment and some legitimate governmental purpose." *Heller v. Doe ex rel. Doe*, 509 U.S. 312, 320 (1993); *see also City of Cleburne, Tex., v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985), *superseded by statute on other grounds*, ("The general rule is

that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest."). In an equal-protection challenge, "the burden is on the one attacking the law to negate every conceivable basis that might support it, even if that basis has no foundation in the record." *Leib*, 558 F.3d at 1306. If "any reasonably conceivable state of facts . . . could provide a rational basis for the classification," the classification must be upheld. *Heller*, 509 U.S. at 320 (citation and quotation marks omitted).

In *Williams v. Comm'r of Soc. Sec.*, the Eleventh Circuit Court of Appeals described the regulatory scheme behind SSR 11-1p, which this Court adopts below:

> For the period from 1999 through 2011, the SSA's procedures permitted a claimant to have two applications for the same type of disability benefits pending at the same time. *See* Procedures for Handling Requests to File Subsequent Applications for Disability Benefits, SSR 11-1p, 76 Fed. Reg. 45,309, 45,310 (July 28, 2011) ("SSR 11-1p" or the "ruling"). Under these procedures, if an ALJ denied a claimant's application for disability benefits and she sought review of that decision from the Appeals Council, she also could file a new application with the SSA under the same title seeking the same type of benefits. *Id.* The agency would process the claimant's second disability claim while she continued to pursue administrative review of her initial claim. *Id.*
>
> Over time, the SSA saw an increase in the number of claimants who both sought Appeals Council review and filed subsequent disability claims. *Id.* When a claimant had two applications seeking benefits under the same title and type pending at the same time, there was a risk of conflicting agency decisions, which the SSA then had to reconcile. *Id.* The SSA found that allowing claimants to have two applications pending at the same time resulted in "improper payments, increased administrative costs, and unnecessary workloads stemming from duplication." *Id.*
>
> To address these problems, the agency issued SSR 11-1p, a Social Security Ruling, which revised the procedures for handling subsequent applications for disability claims of the same title and type. *Id.* Under SSR 11-1p, a claimant generally may not have two

applications for the same type of benefits pending at the same time. *Id.* When a claimant has a request for review pending before the Appeals Council, the agency will not accept a subsequent application from the claimant seeking the same type of benefits. *Id.* The revised procedures effectively required a claimant to choose between pursuing administrative review of her initial application and filing a new one. *Id.*

Even though the SSA will not accept a new application from a claimant while she pursues Appeals Council review, she may submit additional evidence to the Appeals Council relevant to her initial application. *Id.* at 45,110–11; *see Washington v. Soc. Sec. Admin., Comm'r*, 806 F.3d 1317, 1320 (11th Cir. 2015) (explaining that a claimant is permitted to present new evidence at each stage of the administrative process, including before the Appeals Council, and that the Appeals Council is obligated to consider such evidence).

The SSA's regulations have long addressed when the Appeals Council may consider additional evidence submitted by a claimant. *See* 20 C.F.R. § 416.1470(c) (the "regulation"). In the 1980s, the SSA proposed a regulation that would have barred the Appeals Council from considering additional evidence from a claimant in any circumstances. Limit on Future Effect of Applications and Related Changes in Appeals Council Procedures, 52 Fed. Reg. 4,001, 4,001–02 (Feb. 9, 1987). But the SSA ultimately did not implement this broad ban on the Appeals Council's consideration of additional evidence. *Id.* at 4,002. Instead, the agency limited the Appeals Council to considering evidence relating to the period on or before the date of the ALJ's decision. *Id.* At the same time, the SSA added a provision to its regulations specifying that if a claimant submitted additional evidence that the Appeals Council found related to the period after the date of the ALJ's decision, the Appeals Council would return the evidence to the claimant. *Id.* It also would advise the claimant that if she filed a subsequent application for benefits, the date of her request for review would be used as the protective filing date for the application. *See id.*; *see* 20 C.F.R. § 416.1470(c).

In 2011, when the SSA issued SSR 11-1p, it essentially repeated the regulation's language related to protective filing dates. *Compare* 20 C.F.R. § 416.1470(c) (providing that if the Appeals Council returns additional evidence and the claimant timely files a new application, the SSA "will use the date [the claimant] requested Appeals Council review as the filing date for [a] new application") *with* SSR 11-1p, 76 Fed. Reg. at 45,311 (providing that if the Appeals Council returns additional evidence and the claimant timely files a new application,

> the SSA "will consider the date [the claimant] filed the request for Appeals Council review as the filing date for [a] new claim").
>
> Under the regulation and the ruling, then, when a claimant whose disability claim is denied has additional evidence, she must decide between pursuing administrative review of her initial claim before the Appeals Council and filing a new disability claim. If she elects to pursue administrative review and submits new evidence to the Appeals Council, the Appeals Council first asks whether the additional evidence is chronologically relevant: does it "relate[ ] to the period on or before the date" of the ALJ's decision. 20 C.F.R. § 416.1470(a)(5), (c); SSR 11-1p, 76 Fed. Reg. at 45,310. If the Appeals Council determines that the evidence relates to this period (and thus is chronologically relevant), it will grant review if it finds that the additional evidence also is new and material, there is a reasonable probability that the additional evidence would change the outcome of the decision, and the claimant has shown good cause for not previously informing the agency about or submitting the evidence. *See* 20 C.F.R. § 416.1470(a)(5), (b).
>
> If the Appeals Council determines that the claimant's additional evidence is not chronologically relevant, meaning it does not relate to the period on or before the date of the ALJ's decision, the Appeals Council will return the additional evidence to the claimant and explain why it did not accept the evidence. *Id.* § 416.1470(c); SSR 11-1p, 76 Fed. Reg. at 45,311. The Appeals Council also will inform the claimant that if she files a new claim for the same disability benefits under the same title within 60 days of the notice, the SSA will use the date of the claimant's request for review with the Appeals Council as the protective filing date. 20 C.F.R. § 416.1470(c); SSR 11-1p, 76 Fed. Reg. at 45,311.

No. 21-10920, 2022 WL 791711, at *1-3 (11th Cir. Mar. 16, 2022).

As Plaintiff correctly notes, SSA treats those claimants who submit additional evidence to the Appeals Council that is found not to relate to the period on or before the date of the ALJ's decision differently from claimants who submit no evidence to the Appeals Council. Claimants who submit additional evidence to the Appeals Council and who the Appeals Council determines that the additional evidence does not relate to the period on or before the date of the ALJ's hearing

decision, receive a notice explaining its actions in declining to accept the additional evidence and informing the claimant that if he or she files a new application, the agency will consider the date that the claimant filed the request for the Appeals Council's review of the pending claim to be the filing date for a new claim, i.e., the protective filing date. *See* 20 C.F.R. §§ 404.970(c), 416.1470(c). The essence of Plaintiff's argument is that those claimants who submit additional evidence that is deemed not chronologically relevant receive more favorable treatment because they are entitled to a protective filing date. Whereas claimants, like Plaintiff, who do not submit additional evidence, are not entitled to a protective filing date and may just file a new claim.

However, as the ruling explains, SSR 11-1p provides detailed rationale for limiting pending applications from the same claimant and applying protective filing dates to claimants that are classified as having submitted additional evidence. *See* SSR 11-1p, 2011 WL 3962767, at *1–2. The ruling details that the need for a change in policy and procedures for considering subsequent claims of the same type arose from an increase in subsequent disability claims and the resulting issues of conflicting decisions, improper payments, increased administrative costs, and unnecessary workloads. *Id.* The purpose of the new policy and procedures was to support administrative efficiency and conserve resources. *Id.* As argued by the Commissioner and noted in *Williams*, given that a claimant may submit additional evidence without knowing whether it is chronologically relevant, "it was reasonable for the SSA to allow claimants who submit additional evidence to the Appeals

Council that is later determined not to be chronologically relevant to have the benefit of a protective filing date." 2022 WL 791711, at *8. "In contrast, when a claimant has submitted no additional evidence to the Appeals Council, there is no similar reason for the SSA to afford her the benefit of a protective filing date." *Id.* There is a rational relationship between this disparate treatment and a legitimate government purpose.

Because Plaintiff did not submit additionally evidence, SSR 11-1p did not apply to her request for review, thus she was not entitled to a protective date, and her argument that SSR 11-1p is unconstitutional lacks merit.

IV.

Accordingly, after consideration, it is hereby

ORDERED:

1. The decision of the Commissioner is AFFIRMED.

2. The Clerk is directed to enter final judgment in favor of the Commissioner and close the case.

DONE AND ORDERED in Tampa, Florida, on this 19th day of October, 2023.

ANTHONY E. PORCELLI
United States Magistrate Judge

cc: Counsel of Record

SOCIAL SECURITY ADMINISTRATION

Refer to: Rita Emilia Arguijo Garcia

Office of Appellate Operations
5107 Leesburg Pike
Falls Church, VA 22041-3255
Telephone: (877) 670-2722
Date: July 20, 2022

*6502CIPA1008138*NOTAFP.X3.CIPAFP.ODARS.R220720.PS1K 0000000000000800CP03302207203580500104137

NOTICE OF APPEALS COUNCIL ACTION

Rita Emilia Arguijo Garcia
2213 Kendall Spring, Apt. 304
Brandon, FL 33510

This is about your request for review of the Administrative Law Judge's decision dated November 12, 2021. You submitted reasons that you disagree with the decision. We considered the reasons and exhibited them on the enclosed Order of the Appeals Council. We found that the reasons do not provide a basis for changing the Administrative Law Judge's decision.

We Have Denied Your Request for Review

We found no reason under our rules to review the Administrative Law Judge's decision. Therefore, we have denied your request for review.

This means that the Administrative Law Judge's decision is the final decision of the Commissioner of Social Security in your case.

Rules We Applied

We applied the laws, regulations and rulings in effect as of the date we took this action.

Under our rules, we will review your case for any of the following reasons:

- The Administrative Law Judge appears to have abused his or her discretion.
- There is an error of law.
- The decision is not supported by substantial evidence.
- There is a broad policy or procedural issue that may affect the public interest.
- We receive additional evidence that you show is new, material, and relates to the period on or before the date of the hearing decision. You must also show there is a reasonable

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).

See Next Page

probability that the additional evidence would change the outcome of the decision. You must show good cause for why you missed informing us about or submitting it earlier.

If You Disagree With Our Action

If you disagree with our action, you may ask for court review of the Administrative Law Judge's decision by filing a civil action.

If you do not ask for court review, the Administrative Law Judge's decision will be a final decision that can be changed only under special rules.

How to File a Civil Action

You may file a civil action (ask for court review) by filing a complaint in the United States District Court for the judicial district in which you live. The complaint should name the Commissioner of Social Security as the defendant and should include the Social Security number(s) shown at the top of this letter.

You or your representative must deliver copies of your complaint and of the summons issued by the court to the U.S. Attorney for the judicial district where you file your complaint, as provided in rule 4(i) of the Federal Rules of Civil Procedure.

You or your representative must also send copies of the complaint and summons, by certified or registered mail, to the Social Security Administration's Office of the General Counsel that is responsible for the processing and handling of litigation in the particular judicial district in which the complaint is filed. The names, addresses, and jurisdictional responsibilities of these offices are published in the Federal Register (70 FR 73320, December 9, 2005), and are available on-line at the Social Security Administration's Internet site, http://policy.ssa.gov/poms.nsf/links/0203106020.

You or your representative must also send copies of the complaint and summons, by certified or registered mail, to the Attorney General of the United States, Washington, DC 20530.

Time To File a Civil Action

- You have 60 days to file a civil action (ask for court review).
- The 60 days start the day after you receive this letter. We assume you received this letter 5 days after the date on it unless you show us that you did not receive it within the 5-day period.
- If you cannot file for court review within 60 days, you may ask the Appeals Council to extend your time to file. You must have a good reason for waiting more than 60 days to ask for court review. You must make the request in writing and give your reason(s) in the request.

See Next Page

You must mail your request for more time to the Appeals Council at the address shown at the top of this notice. Please put the Social Security number(s) also shown at the top of this notice on your request. We will send you a letter telling you whether your request for more time has been granted.

About The Law

The right to court review for claims under Title II (Social Security) is provided for in Section 205(g) of the Social Security Act. This section is also Section 405(g) of Title 42 of the United States Code.

The right to court review for claims under Title XVI (Supplemental Security Income) is provided for in Section 1631(c)(3) of the Social Security Act. This section is also Section 1383(c) of Title 42 of the United States Code.

The rules on filing civil actions are Rules 4(c) and (i) in the Federal Rules of Civil Procedure.

Need More Help?

1. Visit www.ssa.gov for fast, simple, and secure online service.
2. Call us at 1-800-772-1213, weekdays from 8:00 am to 7:00 pm. If you are deaf or hard of hearing, call TTY 1-800-325-0778. Please mention this notice when you call.
3. You may also call your local office at 866-593-4738.

Social Security
2027 S. Parsons Ave.
Seffner, FL 33584-5207

How are we doing? Go to www.ssa.gov/feedback to tell us.

/s/ *Monique M.A.F. Jarmon*
Monique M.A.F. Jarmon
Appeals Officer

Enclosure: Order of Appeals Council

cc: Michael Steinberg, Esq.,
4925 Independence Pkwy
Fountain Sq. II, # 195
Tampa, FL 33634

*0509CIPA1008138*NOTAFP.X3.CIP.AFP.ODARS.R220720.PS1K 00000000000000000CP0330220720358050010437

*0504CIPA108138*NOTAFT-X3 CIPAFP-ODARS-R220720-P51K 0000000000000000000GCP03022072035850500104137

Social Security Administration
OFFICE OF APPELLATE OPERATIONS

ORDER OF APPEALS COUNCIL

IN THE CASE OF	**CLAIM FOR**
Rita Emilia Arguijo Garcia (Claimant)	Period of Disability Disability Insurance Benefits, and Supplemental Security Income
(Wage Earner)	

The Appeals Council has received additional evidence, which it is making part of the record. That evidence consists of the following exhibits:

Exhibit 23B	Request for Review of Hearing Decision/Order submitted by Jacklyn Steinberg, received December 7, 2021 (3 pages)
Exhibit 34E	Brief submitted by Michael Steinberg, Esq., dated November 29, 2021 (9 pages)

Date: July 20, 2022

SOCIAL SECURITY ADMINISTRATION

Refiérase a: Rita Emilia Arguijo Garcia

Office of Appellate Operations
5107 Leesburg Pike
Falls Church, VA 22041-3255
Teléfono: (877) 670-2722
Fecha: 20 de julio del 2022

*0505CIPA1008138*NOTAFP.X3.CIPAFP.ODARS.R220720.PSLK 000000000000000CP030220720203805001104187

Ms. Rita Emilia Arguijo Garcia
2213 Kendall Spring, Apt. 304
Brandon, FL 33510

Adjunto le enviamos, en inglés, la notificación de la acción tomada por el Consejo de Apelaciones en su solicitud de Revisión de Audiencia. La carta le explica por qué tomamos esta acción. **La carta también fija un límite de tiempo para solicitar una nueva revisión si usted no está de acuerdo con nuestra acción.**

Si usted no puede leer la carta en inglés, por favor pídale a alguien que le ayude a traducirla. Si no encuentra ayuda, puede solicitar en cualquier oficina de Seguro Social que le traduzcan la carta.

El Consejo de Apelaciones ha llegado a la conclusión de que no hay base para conceder la solicitud de revisión. Por lo tanto, la decisión de la audiencia se considera como la decisión final del Comisionado en su caso. Para llegar a esta conclusión, el Consejo de Apelaciones tomó en consideración las leyes, reglamentos y decisiones aplicables vigentes a la fecha de la determinación.

Si usted no está de acuerdo con la decisión del Juez de Derecho Administrativo, puede solicitar una revisión por el tribunal.

Si usted no solicita una revisión judicial, la decisión del Juez de Derecho Administrativo será la decisión final que sólo podrá cambiarse bajo reglas especiales.

Cómo Radicar Una Acción Civil

Usted puede iniciar una acción civil (solicitar una revisión por el tribunal) radicando una demanda ante el Tribunal del Distrito de los Estados Unidos en el distrito judicial donde usted vive. La demanda debe nombrar al Comisionado de Seguro Social como la parte demandada y debe incluir el número de Seguro Social que aparece en el encabezamiento de esta carta.

Usted o su representante tiene que entregar copias de la demanda y de los emplazamientos judiciales emitidos por el tribunal al Fiscal Federal del distrito judicial donde usted radicó la demanda, como indicado en la regla 4 (i) de las Reglas de Procedimiento Civil Federal.

¿Sospecha que alguien está cometiendo fraude al Seguro Social?
Infórmenos por medio de la Internet en http://oig.ssa.gov/e o llamando a la línea directa de abuso y fraude de la Oficina del Inspector General, 1-800-269-0271 y oprima el 7 para español (TTY 1-866-501-2101).

Siguiente Página

Además, usted o su representante debe entregar copias de la queja y del emplazamiento, por correo certificado o registrado, a la Oficina del Consejo General de la Administración de Seguridad Social que es responsable del proceso y manejo en el distrito judicial particular en el cual se radica la queja. Los nombres, las direcciones y los responsabilidades jurisdiccionales de estas oficinas se publican en el registro federal, y están disponibles en el sitio de Internet del la Administración de Seguridad Social, http://policy.ssa.gov/poms.nsf/links/0203106020.
Usted o su representante debe también enviar copias del emplazamiento, por correo certificado o registrado, al Attorney General of the United States, Washington, DC 20530.

Límite de Tiempo Para Radicar Una Acción Civil

- Usted tiene 60 días para entablar una acción civil (pedir una revisión por el tribunal).

- Los 60 días comienzan el día después de usted haber recibido esta carta. Asumiremos que usted recibió esta carta 5 días después de la fecha indicada en la misma, a menos que usted pruebe que no la recibió dentro del período de 5 días.

- Si usted no puede radicar su petición para la revisión judicial dentro de los 60 días, puede pedir una extensión de tiempo al Consejo de Apelaciones. Usted tiene que demostrar que tiene una buena razón para haber esperado más de 60 días para solicitar la revisión judicial. Su petición tiene que ser por escrito e indicar las razones.

Usted tiene que enviar su petición pidiendo una extensión de tiempo al Consejo de Apelaciones a la dirección que aparece en la primera página de esta carta. Por favor también incluya el número de Seguro Social en su petición. Nosotros le enviaremos una notificación dejándole saber si su petición ha sido concedida.

La Ley

El derecho a una revisión por el tribunal bajo el Título II (Seguro Social) es provisto en la Sección 205(g) de la Ley de Seguro Social. Esta sección es también la Sección 405(g) del Título 42 del Código de los Estados Unidos.

El derecho a una revisión por el tribunal bajo el Título XVI (Seguridad de Ingreso Suplementario) es provisto en la Sección 1631(c)(3) de la Ley de Seguro Social. Esta sección es también en la Sección 1383(c) del Título 42 del Código de los Estados Unidos.

Las reglas para entablar una acción civil se encuentran en las Reglas 4(c) e (i) de las Reglas de Procedimiento Civil Federal.

SOCIAL SECURITY ADMINISTRATION

Office of Hearings Operations
Fountain Square II
4925 Independence Pkwy
Suite 200
Tampa, FL 33634-9947

Date: November 12, 2021

Rita Emilia Arguijo Garcia
2213 Kendall Spring
Apt 304
Brandon, FL 33510

Notice of Decision – Unfavorable

I carefully reviewed the facts of your case and made the enclosed decision. Please read this notice and my decision.

If You Disagree With My Decision

If you disagree with my decision, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you or your representative must ask in writing that the Appeals Council review my decision. The preferred method for filing your appeal is by using our secure online process available at https://www.ssa.gov/benefits/disability/appeal.html.

You may also use our Request for Review form (HA-520) or write a letter. The form is available at https://www.ssa.gov/forms/ha-520.html. Please write the Social Security number associated with this case on any appeal you file. You may call (800) 772-1213 with questions.

Please send your request to:

Appeals Council
5107 Leesburg Pike
Falls Church, VA 22041-3255

Time Limit To File An Appeal

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

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).

See Next Page

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

What Else You May Send Us

You or your representative may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence **with your appeal**. Sending your written statement and any new evidence with your appeal may help us review your case sooner.

How An Appeal Works

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

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. If the Appeals Council reviews your case on its own, it will send you a notice within 60 days of the date of this notice.

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.

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.

See Next Page

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 (855) 433-5873. Its address is:

Social Security
Suite 100
4010 Gunn Highway
Tampa, FL 33618-8744

Edward T. Bauer
Administrative Law Judge

Enclosures:
Form HA-L76-OP2-SP (Spanish Notice)
Decision Rationale

cc: Michael Steinberg
Fountain Sq. II # 195
4925 Independence Pkwy
Tampa, FL 33634

ADMINISTRACIÓN DEL SEGURO SOCIAL

Oficina de Operaciones de Audiencias
Fountain Square II
4925 Independence Pkwy
Suite 200
Tampa, FL 33634-9947

Fecha: 12 de noviembre 2021

Rita Emilia Arguijo Garcia
2213 Kendall Spring
Apt 304
Brandon, FL 33510

Aviso de Decisión – Desfavorable

He revisado los datos su caso cuidadosamente y tomado la decisión adjunta. Por favor lea esta notificación y mi decisión.

Si no está de acuerdo con mi decisión

Si usted no está de acuerdo con mi decisión, puede apelar al Consejo de Apelaciones.

Cómo presentar una apelación
Para apelar, usted o su representante debe solicitar por escrito que el Consejo de Apelaciones revise la decisión. El método preferido para presentar su apelación es usando nuestro servicio seguro en línea disponible en https://www.ssa.gov/benefits/disability/appeal.html.

También puede usar el formulario Solicitud de Revisión (HA-520) o escribir una carta. El formulario está disponible en https://www.ssa.gov/forms/ha-520.html. Por favor escriba el número de Seguro Social asociado con este caso en cualquier apelación que presente. También puede llamar al (800) 772-1213 con sus preguntas.

Por favor envíe su solicitud a:

Appeals Council
5107 Leesburg Pike
Falls Church, VA 22041-3255

Límite de tiempo para solicitar una apelación

Tiene que presentar su apelación por escrito **dentro de 60 días** de la fecha en que reciba este aviso. El Consejo de Apelaciones supone que usted recibió este aviso 5 días después de la fecha en el aviso a menos que nos muestre que no lo recibió dentro del periodo de 5 días.

¿Sospecha que alguien está cometiendo fraude al Seguro Social?
Infórmenos por medio de la Internet en http://oig.ssa.gov/e o llamando a la línea directa de abuso y fraude de la Oficina del Inspector General, 1-800-269-0271 y oprima el 7 para español (TTY 1-866-501-2101).

Siguiente Página

El Consejo de Apelaciones desestimará una solicitud tardía a menos que demuestre que tenía una buena razón para no solicitarla a tiempo.

Que más puede enviarnos

Usted o su representante puede enviarnos una declaración escrita referente a su caso. También puede enviarnos evidencia nueva. Tiene que enviarnos su declaración escrita y cualquier evidencia nueva **con su apelación**. El enviarnos su declaración escrita junto con cualquier evidencia nueva con su apelación puede ayudarnos a revisar su caso más rápido.

Cómo funciona el proceso de apelación

El Consejo de Apelaciones revisará su caso entero. Revisará toda mi decisión, aún los aspectos con los cuales usted está de acuerdo. La revisión puede hacer cualquier parte de mi revisión más o menos favorable o desfavorable para usted. Las reglas que el Consejo de Apelaciones aplica se encuentran en el Código de Regulaciones Federales, Título 20, Capítulo III, Parte 404 (Inciso J) y Parte 416 (Inciso N).

El Consejo de Apelaciones puede:

- Denegar su apelación
- Devolver su caso a mí o a otro Juez de Derecho Administrativo para una decisión nueva
- Emitir su propia decisión o
- Desestimar su caso

El Consejo de Apelaciones le enviará un aviso informándole lo que decida hacer. Si el Consejo de Apelaciones deniega su apelación, mi decisión se convertirá en la decisión final.

El Consejo de apelaciones puede revisar mi decisión por su propia cuenta

El Consejo de Apelaciones puede revisar mi decisión aún sin que usted la apele. Si así lo decide, el Consejo de Apelaciones le enviará un aviso acerca de la revisión dentro de 60 días de la fecha indicada en este aviso.

Cuando no hay una revisión por el Consejo de Apelaciones

Si usted no apela y el Consejo de Apelaciones no revisa mi decisión independientemente, mi decisión se convierte final. Una decisión final sólo se puede cambiar bajo circunstancias especiales. No tendrá el derecho a una revisión por la Corte Federal.

Nueva solicitud

Usted tiene el derecho de presentar una solicitud nueva en cualquier momento, pero presentar una nueva solicitud no es lo mismo que apelar mi decisión. Si no está de acuerdo con mi decisión y presenta una solicitud nueva en vez de una apelación, podría perder algunos

beneficios o no tener derecho a ningún beneficio. Mi decisión también se puede usar para denegar una solicitud nueva para beneficios si los datos y cuestiones son los mismos. Si no está de acuerdo con mi decisión, usted debe solicitar una apelación dentro de 60 días.

Si tiene alguna pregunta

Le invitamos a que visite nuestro sitio de Internet en www.segurosocial.gov para encontrar respuestas a preguntas en general sobre el Seguro Social. También puede llamar al (800) 772-1213 con sus preguntas. Si es sordo o tiene problemas de audición, favor de usar nuestro número TTY (800) 325-0778.

Si tiene alguna otra pregunta, favor de llamar, escribir, o visitar cualquier oficina del Seguro Social. Por favor lleve consigo este aviso y el aviso de desestimación. El número de teléfono de su oficina local es (855) 433-5873. La dirección es:

Social Security
Suite 100
4010 Gunn Highway
Tampa, FL 33618-8744

Edward T. Bauer
Juez de Derecho Administrativo

adjunto: Michael Steinberg
Fountain Sq. II # 195
4925 Independence Pkwy
Tampa, FL 33634

SOCIAL SECURITY ADMINISTRATION
Office of Hearings Operations

DECISION

IN THE CASE OF	**CLAIM FOR**
Rita Emilia Arguijo Garcia (Claimant)	Period of Disability, Disability Insurance Benefits, and Supplemental Security Income
(Wage Earner)	589-76-0718 (Social Security Number)

JURISDICTION AND PROCEDURAL HISTORY

On February 25, 2020, the claimant filed a Title II application for a period of disability and disability insurance benefits. The claimant also filed a Title XVI application for supplemental security income on February 25, 2020. In both applications, the claimant alleged disability beginning December 31, 2019. These claims were denied initially on August 12, 2020, and upon reconsideration on February 16, 2021. Thereafter, the claimant filed a written request for hearing received on April 12, 2021 (20 CFR 404.929 *et seq.* and 416.1429 *et seq.*). On October 7, 2021, I held a telephone hearing due to the extraordinary circumstance presented by the Coronavirus Disease 2019 (COVID-19) Pandemic. All participants attended the hearing by telephone. The claimant agreed to appear by telephone before the hearing, and confirmed such agreement at the start of the hearing (Exhibit 17B, 19B, and 20B). The claimant testified with the assistance of a Spanish interpreter. The claimant is represented by Michael Steinberg, an attorney. Jeffrey Lucas, an impartial vocational expert, also appeared at the hearing.

The claimant submitted or informed me about all written evidence at least five business days before the date of the claimant's scheduled hearing (20 CFR 404.935(a) and 416.1435(a)).

Evidence that the adjudicator might have considered in deciding the prior claim may appear in the current file. Any such intermingling is the result of an administrative or clerical decision in preparing the case file. That process was not under my control, and the mixing of the various sets of evidence does not indicate any intent on my part to reopen any prior claim. In rendering this decision, I may reference medical records from the prior period, including documents from a prior file. I do so only for purposes of chronological and longitudinal analysis. By discussing such evidence, I do not intend or imply reopening.

ISSUES

The issue is whether the claimant is disabled under sections 216(i), 223(d) and 1614(a)(3)(A) 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

See Next Page

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.

With respect to the claim for a period of disability and disability insurance benefits, there is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2024. Thus, the 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 the claimant has not been under a disability within the meaning of the Social Security Act from December 31, 2019, through the date of this decision.

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) and 416.920(a)). The steps are followed in order. If it is determined that the 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 the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(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) and 416.972(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) and 416.972(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 she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her 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 the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(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 and 416.922, Social Security Rulings (SSRs) 85-28 and 16-3p). If the claimant does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

See Next Page

At step three, I must determine whether the 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, 404.1526, 416.920(d), 416.925, and 416.926). If the 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 and 416.909), the 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 the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, I must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, I must determine at step four whether the claimant has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the 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 the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do her past relevant work, the claimant is not disabled. If the 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) and 416.920(g)), I must determine whether the claimant is able to do any other work considering her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, she is not disabled. If the claimant is not able to do other work and meets the duration requirement, she is disabled. Although the 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 the claimant can do, given the residual functional capacity, age, education, and work experience (20 CFR 404.1512, 404.1560(c), 416.912 and 416.960(c)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

1. The claimant meets the insured status requirements of the Social Security Act through December 31, 2024.

2. The claimant has not engaged in substantial gainful activity since December 31, 2019, the alleged onset date (20 CFR 404.1571 *et seq.*, and 416.971 *et seq.*).

See Next Page

3. The claimant has the following severe impairments: degenerative disc disease of the lumbar spine, lumbar radiculopathy, degenerative disc disease of the cervical spine, cervical radiculopathy, osteoarthritis of the left acromioclavicular joint, left rotator cuff tear, status post decompression and repair, adhesive capsulitis of the left shoulder, history of right rotator cuff tear, status post repair, asthma, migraine, and obesity (20 CFR 404.1520(c) and 416.920(c)).

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

The claimant's hypertension, COVID-19 virus infection, and gastroesophageal reflex disease (GERD) are not severe impairments as defined in the regulations (20 CFR 404.1521 and 416.921). The claimant was treated at the emergency room in June 2020 for COVID-19 virus infection with shortness of breath and acute chest pain. However, the condition was transient in nature and does not meet the duration requirement to be a severe impairment (Exhibit 26F). The claimant was also treated for hypertension during the period at issue. Nonetheless, she consistently had normal cardiovascular examinations and there is no evidence that the impairment causes the claimant any functional limitations (Exhibit 26F, 32F, and 34F). In addition, the claimant was noted to have a history of GERD during an emergency room visit in April 2019 (Exhibit 21F). However, there is no evidence that the impairment causes the claimant any functional limitations. I considered all of the claimant's medically determinable impairments, including those that are not severe, when assessing the claimant's residual functional capacity.

The claimant's medically determinable mental impairments of depressive disorder and major depressive disorder, single episode, considered singly and in combination, do not cause more than minimal limitation in the claimant's ability to perform basic mental work activities and are therefore nonsevere.

In making this finding, I have considered the broad functional areas of mental functioning set out in the disability regulations for evaluating mental disorders and in the Listing of Impairments (20 CFR, Part 404, Subpart P, Appendix 1). These four broad functional areas are known as the "paragraph B" criteria.

The first functional area is understanding, remembering or applying information. In this area, the claimant has mild limitation. The consultative psychologist reported the claimant had relevant, coherent, and logical speech and thought processes, adequate mental flexibility, good receptive and expressive language, adequate mental computation, age appropriate and unremarkable thought form and content, and adequate immediate and recent memory and good remote memory (Exhibit 29F). In addition, treatment records from the Northside Mental Health Center indicated the claimant had good immediate, recent, and remote memory, normal thought processes, and normal thought content (Exhibit 35F).

The next functional area is interacting with others. In this area, the claimant has mild limitation. The consultative psychologist reported the claimant had relevant, coherent, and logical speech,

See Next Page

good receptive and expressive language, good social skills, and unremarkable thought content (Exhibit 29F). Additionally, treatment records from the Northside Mental Health Center indicated the claimant had a depressed mood but was also cooperative with normal thought content (Exhibit 35F).

The third functional area is concentrating, persisting or maintaining pace. In this area, the claimant has mild limitation. The consultative psychologist reported the claimant had difficulties in processing speed, but also had adequate attention and concentration, adequate mental flexibility, adequate mental computation, coherent, logical, and goal directed thought processes, and age appropriate and unremarkable thought form and content (Exhibit 29F). Furthermore, treatment records from the Northside Mental Health Center indicated the claimant had fair concentration, normal thought processes, and normal thought content (Exhibit 35F).

The fourth functional area is adapting or managing oneself. In this area, the claimant has mild limitation. The consultative psychologist reported the claimant had fair abstract reasoning, good insight, age appropriate and unremarkable thought form and content, and fair judgment related to self-care and social problem-solving (Exhibit 29F). In addition, treatment records from the Northside Mental Health Center indicated the claimant had normal thought content, appropriate judgment, and good insight (Exhibit 35F).

Because the claimant's medically determinable mental impairments cause no more than "mild" limitation in any of the functional areas and the evidence does not otherwise indicate that there is more than a minimal limitation in the claimant's ability to do basic work activities, they are nonsevere (20 CFR 404.1520a(d)(1) and 416.920a(d)(1)).

The limitations identified in the "paragraph B" criteria are not a residual functional capacity assessment but are used to rate the severity of mental impairments at steps 2 and 3 of the sequential evaluation process. The mental residual functional capacity assessment used at steps 4 and 5 of the sequential evaluation process requires a more detailed assessment. The following residual functional capacity assessment reflects the degree of limitation I have found in the "paragraph B" mental function analysis.

The claimant's chest pain and abdominal pain are not medically determinable impairments. The claimant has been treated for chest pain and abdominal pain during the period at issue. Nonetheless, I note that pain is a symptom of an impairment, not a medically determinable impairment itself.

4. The claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925 and 416.926).

The claimant's impairments do not meet listing 1.15, 1.16, or 1.18 because the claimant does not have a documented need for a walker, bilateral canes, bilateral crutches, or a wheeled and seated mobility device. The claimant also does not have a documented inability to use one upper extremity to independently initiate, sustain, and complete work-related activities involving fine

See Next Page

and gross movements and a documented medical need for a one-handed, hand-held assistive device that requires the use of the other upper extremity or a wheeled and seated mobility device involving the use of one hand. In addition, the claimant does not have a documented inability to use both upper extremities to the extent that neither can be used to independently initiate, sustain, and complete work-related activities involving fine and gross movements.

The claimant's asthma does not meet listing 3.03 because she does not have the requisite FEV1 score and the necessary number of exacerbations requiring hospitalization within a 12-month period.

The claimant does not meet the equivalent of a listing per SSR 19-2p. Her obesity alone does not medically equal a listed impairment, nor does her obesity considered with her other impairments reach listing-level severity as required by SSR 19-2p. While the evidence of record shows that the claimant's obesity has increased the severity of her functional limitations, her limitations still do not reach the heightened level of severity required to meet or equal any listing.

5. After careful consideration of the entire record, I find that the claimant has the residual functional capacity to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b) except the claimant can stand/walk 6 total hours in an 8-hour workday; sit 6 total hours; never climb ladders, ropes, or scaffolds, occasionally climb ramps and stairs, balance, stoop, kneel, crouch, and crawl. The claimant can occasionally reach overhead bilaterally. The claimant must avoid concentrated exposure to extreme cold, extreme heat, wetness, humidity, vibration, hazards, and fumes, odors, dusts, gases, and other pulmonary irritants. The claimant can have no exposure to loud or very loud noise.

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 416.929 and SSR 16-3p. I also considered the medical opinion(s) and prior administrative medical finding(s) in accordance with the requirements of 20 CFR 404.1520c and 416.920c.

In considering the 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 medically acceptable clinical or laboratory diagnostic techniques--that could reasonably be expected to produce the claimant's pain or other symptoms.

Second, once an underlying physical or mental impairment(s) that could reasonably be expected to produce the claimant's pain or other symptoms has been shown, I must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the 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 must consider other evidence in the record to determine if the claimant's symptoms limit the ability to do work-related activities.

See Next Page

The claimant alleges disability based on a combination of physical and mental impairments, although the majority of her complaints were physical. She alleged suffering from shoulder problems, stomach problems, asthma, migraines, back pain, neck pain, chest pain, and depression. The claimant experiencing pain in her back and shoulder that limited her ability to sit, stand, walk, and perform house or yard work. She alleged that she could not lift more than a gallon of milk. The claimant alleged that she got migraine headaches almost every day. She alleged experiencing constipation and reflux. The claimant alleged experiencing frequent asthma symptoms that were aggravated by walking and perfume. She alleged being forgetful secondary to depression. In addition, the claimant alleged that the combination of her impairments caused her difficulty with lifting, squatting, bending, standing, reaching, walking, sitting, kneeling, climbing stairs, using her hands, memory, completing tasks, and concentration (Hearing Testimony and Exhibit 7E and 11E).

After careful consideration of the evidence, I find that the claimant's medically determinable impairments could reasonably be expected to cause the alleged symptoms; however, the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely consistent with the medical evidence and other evidence in the record for the reasons explained in this decision.

The claimant primarily alleges disability based on exertional, postural, manipulative, and environmental limitations caused by orthopedic impairments, asthma, and migraines. I acknowledge the claimant has been treated for back, neck, and shoulder problems, asthma, migraines, and obesity and have accordingly restricted her to performing light work with some additional postural, reaching, and environmental limitations. However, the severity of the claimant's allegations is inconsistent with the medical evidence of record.

For a historical perspective, a magnetic resonance imaging (MRI) scan of the claimant's cervical spine from April 2017 showed mild disc bulges at C3-4, C5-6, and C6-7. She also underwent an MRI of her lumbar spine at that time that revealed broad disc bulges at L4-5 and L5-S1 with bilateral foraminal narrowing (Exhibit 5F). The claimant underwent right arthroscopic rotator cuff repair, biceps tenodesis, distal clavicle excision with extensive debridement, and subacromial decompression in June 2017. An MRI of the claimant's right shoulder from August 2018 noted high grade bursal surface partial thickness tear of the supraspinatus tendon at the footplate and subacromial subdeltoid bursitis, but no full-thickness rotator cuff tear. She then underwent left shoulder arthroscopic rotator cuff repair, biceps tenodesis, distal clavicle excision, extensive debridement, and subacromial decompression in October 2018 (Exhibit 12F). In addition, pulmonary function testing from October 2018 found the claimant had FVCs of 2.52, 3.07, and 2.85 and FEV1s of 1.98, 2.30, and 2.64 (Exhibit 11F).

Dr. Charles Lebowitz, a consultative physician, examined the claimant in March 2019 and reported she had 4/5 strength in the bilateral upper extremities, 4/5 grip strength, and reduced range of motion in the shoulders, but normal range of motion elsewhere, 5/5 strength in the bilateral lower extremities, unimpaired digital dexterity, negative Tinel and Phalen's sign, normal pulmonary examination, normal sensation, negative straight leg raise testing, and a normal gait (Exhibit 16F and 17F). She was treated at the emergency room in April 2019 for left-sided thoracic back pain. The claimant was treated at the emergency room again in July

See Next Page

2019 for lumbar radiculopathy and a low back strain. She reportedly had tenderness in the right lumbar paraspinal muscle and right buttock, increased with straight leg raise, but normal range of motion in the back and intact sensation (Exhibit 21F).

The claimant was treated in 2019 and early 2020 at Baycare Medical Group Orthopedic Surgery for adhesive capsulitis of the left shoulder, left shoulder pain, right shoulder pain, and cervical radiculopathy, although she was treated for right shoulder pain and cervical radiculopathy at only one visit. She generally had reduced range of motion in the left shoulder, but no tenderness to palpitation, intact sensation, no pain with manipulation, good strength, and normal range of motion in the neck. An ultrasound of the claimant's left shoulder from November 2019 showed an intact supraspinatus. X-rays of her right shoulder from January 2020 were unremarkable (Exhibit 24F). Additionally, the claimant underwent X-rays of her lumbar spine in July 2020 that were normal (Exhibit 27F, and 28F).

The claimant was treated at the emergency room in November 2020 for chest pain. Her physical examination revealed normal breath sounds with no wheezing or rales, normal range of motion in the neck and musculoskeletal system, intact sensation, normal motor strength, and a normal gait. She was also treated at the emergency room in April 2021 for an upper respiratory infection. However, the claimant reportedly had clear lungs, nonlabored respirations, no tenderness and normal range of motion in the back and extremities, and intact sensation and motor strength (Exhibit 32F). The claimant was treated from April to August 2021 at Pulmonary Associates of Tampa for moderate persistent asthma and obesity. She had a body mass index of 38, indicating obesity, but also had normal respiratory examinations with clear breath sounds and a normal gait (Exhibit 33F). Additionally, Dr. Gustavo Serrano treated the claimant in July 2021 for migraine and low back pain, but she had a normal physical examination with clear lungs and a normal gait (Exhibit 34F).

As for medical opinion(s) and prior administrative medical finding(s), I cannot defer or give any specific evidentiary weight, including controlling weight, to any prior administrative medical finding(s) or medical opinion(s), including those from medical sources. I have fully considered the medical opinions and prior administrative medical findings as follows:

Dr. Ceferina DelRosario, a State agency physician, opined in July 2020 that the claimant was capable of performing light work with frequent overhead reaching and some additional postural and environmental limitations (Exhibit 1A and 2A). Dr. Paul Sporn, another State agency physician, gave a similar opinion in February 2021 (Exhibit 7A and 8A). I find these opinions generally persuasive because they are largely consistent with the medical evidence of record. The claimant's physical examinations from 2020-2021 noted reduced range of motion in the left shoulder and pain in the bilateral shoulders and neck at times, but also indicated intact sensation, normal motor strength, normal respiratory examinations, and a normal gait (Exhibit 24F, 32F, 33F, and 34F). However, I find that the overall record warrants more restrictive overhead reaching limitations.

Julie Bruno, Psy.D., a State agency psychologist, opined in August 2020 that the claimant did not have a severe mental impairment (Exhibit 1A and 2A). David Tessler, Psy.D., another State agency psychologist, affirmed this opinion in January 2021 (Exhibit 7A and 8A). I find these

See Next Page

opinions persuasive because they are consistent with the consultative examination and the treatment records from the Northside Mental Health Center. These mental status examinations noted depressed mood at one visit and difficulties in processing speed at another visit, but also documented intact speech, receptive and expressive language, memory, social skills, mental computations, judgment, insight, thought processes, though content, and concentration (Exhibit 29F and 35F).

Monica Rodriguez Pagan, Psy.D. opined in November 2020 that "the mental health symptoms based on report and clinical observations appeared to be moderately impacting activities of daily living, vocational performance, and interpersonal interactions." I find this opinion unpersuasive because it is inconsistent with Dr. Pagan's report. Dr. Pagan's reported documented an intact mental status examination aside from difficulties in processing speed and the claimant did not have any limitations in her activities of daily living caused by her mental impairments (Exhibit 29F). In addition, the opinion is not supportable in light of the mental status examinations with the treating providers demonstrating appropriate mood and affect, normal judgment, and appropriate behavior (Exhibits 21F/7; 22F/58; 32F/40; and 35F/15). I note that Dr. Pagan did not have the opportunity to review any of the claimant's treatment records in formulating her opinion (Exhibit 29F/2).

Based on the foregoing, I find the claimant has the above residual functional capacity assessment, which is supported by the medical evidence of record and the opinions of Dr. DelRosario, Dr. Sporn, Dr. Bruno, and Dr. Tessler.

6. The claimant is capable of performing past relevant work as a fast-food worker. This work does not require the performance of work-related activities precluded by the claimant's residual functional capacity (20 CFR 404.1565 and 416.965).

The claimant indicated, within the relevant 15-year period, she previously worked as a fast-food worker at McDonalds from 2009-2012, housekeeper/cleaner, and construction site cleaner (Exhibit 1E, 4E, and 8E). Social Security Administration records reference substantial gainful activity earnings within the past 15 years from 2009-2019 (Exhibit 5D and 6D). At hearing, the vocational expert characterized the claimant's work history, pursuant to the Dictionary of Occupational Titles (DOT), as follows:

(1) Fast-food worker (DOT 311.472-010), which is considered light, unskilled (SVP 2) work;
(2) Cleaner (DOT 323.687-014), which is considered light, unskilled (SVP 2) work; and,
(3) Deliverer, Outside (DOT 230.663-010), which is considered light, unskilled (SVP 2) work.

I find that that the aforementioned jobs represent past relevant work.

Moreover, at hearing, I asked the vocational expert to testify as to the claimant's ability to perform her past relevant work. I asked the vocational expert to base his testimony on a hypothetical individual with the same age and education as the claimant. The vocational expert testified that, given the residual functional capacity detailed above, the hypothetical individual would be capable of performing the claimant's past relevant work of **fast-food worker as**

See Next Page

generally performed. I accept this testimony in accordance with SSR 00-4p and find that the claimant can perform her past relevant work.

In addition to past relevant work, there are other jobs that exist in significant numbers in the national economy that the claimant also can perform, considering the claimant's age, education, work experience, and residual functional capacity (20 CFR 404.1569, 404.1569a, 416.969, and 416.969a). Therefore, I make the following alternative findings for step five of the sequential evaluation process.

The claimant was born on May 31, 1967 and was 52 years old, which is defined as an individual closely approaching advanced age, on the alleged disability onset date (20 CFR 404.1563 and 416.963). The claimant has a limited education (20 CFR 404.1564 and 416.964). Transferability of job skills is not an issue in this case because the claimant's past relevant work is unskilled (20 CFR 404.1568 and 416.968).

In determining whether a successful adjustment to other work can be made, I must consider the claimant's residual functional capacity, age, education, and work experience in conjunction with the Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix 2. If the claimant can perform all or substantially all of the exertional demands at a given level of exertion, the medical-vocational rules direct a conclusion of either "disabled" or "not disabled" depending upon the claimant's specific vocational profile (SSR 83-11). When the claimant cannot perform substantially all of the exertional demands of work at a given level of exertion and/or has nonexertional limitations, the medical-vocational rules are used as a framework for decisionmaking unless there is a rule that directs a conclusion of "disabled" without considering the additional exertional and/or nonexertional limitations (SSRs 83-12 and 83-14). If the claimant has solely nonexertional limitations, section 204.00 in the Medical-Vocational Guidelines provides a framework for decisionmaking (SSR 85-15).

If the claimant had the residual functional capacity to perform the full range of light work, a finding of "not disabled" would be directed by Medical-Vocational Rule 202.10. However, the claimant's ability to perform all or substantially all of the requirements of this level of work has been impeded by additional limitations. To determine the extent to which these limitations erode the unskilled light occupational base, I asked the vocational expert whether jobs exist in the national economy for an individual with the claimant's age, education, work experience, and residual functional capacity. The vocational expert testified that, given the residual functional capacity detailed above, such an individual would be able to perform the following work, as per the Dictionary of Occupational Titles (DOT):

(1) Mail Sorter (DOT 222.687-022), which is considered light, unskilled (SVP 2) work, and of which there are approximately 106,000 jobs nationwide;
(2) Router (DOT 222.587-038), which is considered light, unskilled (SVP 2) work, and of which there are approximately 32,000 jobs nationwide; and,
(3) Cashier II (DOT 211.462-010), which is considered light, unskilled (SVP 2) work, and of which there are approximately 533,000 jobs nationwide.

See Next Page

Pursuant to SSR 00-4p, the vocational expert's testimony is consistent with the information contained in the DOT. However, the DOT does not specifically address overhead reaching and the vocational expert based this portion of his testimony on his training and experience.

Based on the testimony of the vocational expert, I conclude that, considering the claimant's age, education, work experience, and residual functional capacity, the claimant is capable of making a successful adjustment to other work that exists in significant numbers in the national economy. A finding of "not disabled" is therefore appropriate under the framework of the above-cited rule.

7. The claimant has not been under a disability, as defined in the Social Security Act, from December 31, 2019, through the date of this decision (20 CFR 404.1520(f) and 416.920(f)).

DECISION

Based on the application for a period of disability and disability insurance benefits filed on February 25, 2020, the claimant is not disabled under sections 216(i) and 223(d) of the Social Security Act.

Based on the application for supplemental security income filed on February 25, 2020, the claimant is not disabled under section 1614(a)(3)(A) of the Social Security Act.

/s/ *Edward T. Bauer*
Edward T. Bauer
Administrative Law Judge

November 12, 2021
Date

LIST OF EXHIBITS

Payment Documents/Decisions

Component	No.	Description	Received	Dates	Pages
X06	1A	Disability Determination Explanation		2020-08-12	15
X06	2A	Disability Determination Explanation		2020-08-12	15
X06	3A	Disability Determination Transmittal		2020-08-12	1
X06	4A	Disability Determination Transmittal		2020-08-12	1
X06	5A	Explanation of Determination		2020-08-12	1
X06	6A	Explanation of Determination		2020-08-12	1
X06	7A	Disability Determination Explanation		2021-02-15	21
X06	8A	Disability Determination Explanation		2021-02-15	21
X06	9A	Disability Determination Transmittal		2021-02-15	1
X06	10A	Explanation of Determination		2021-02-15	3
X06	11A	Disability Determination Transmittal		2021-02-15	1
X06	12A	Explanation of Determination		2021-02-15	3

Jurisdictional Documents/Notices

Component	No.	Description	Received	Dates	Pages
X06	1B	Request for Reconsideration		2019-01-15	2
X06	2B	Fee Agreement for Representation before SSA		2020-02-03	1
X06	3B	SSA-1696 - Claimant's Appointment of a Representative		2020-02-25	1

X06	4B	T2 Notice of Disapproved Claim	2020-08-12	6
X06	5B	T16 Notice of Disapproved Claim	2020-08-12	5
X06	6B	Request for Reconsideration	2020-09-08	1
X06	7B	Request for Reconsideration	2020-09-11	2
X06	8B	Request for Reconsideration	2020-09-11	2
X06	9B	T2 Disability Reconsideration Notice	2021-03-17	17
X06	10B	T16 Disability Reconsideration Notice	2021-03-17	17
X06	11B	Request for Hearing by ALJ	2021-04-16	1
X06	12B	Request for Hearing by ALJ	2021-04-16	2
X06	13B	Request for Hearing by ALJ	2021-04-22	4
X06	14B	COVID Hearing Agreement Form	2021-04-26	28
X06	15B	Request for Hearing Acknowledgement Letter	2021-04-29	21
X06	16B	Outgoing ODAR Correspondence	2021-06-09	2
X06	17B	Waive Advance Notice of Hearing	2021-06-17	1
X06	18B	Hearing Notice	2021-07-15	33
X06	19B	Acknowledge Notice of Hearing	2021-07-22	1
X06	20B	Acknowledge Notice of Hearing (Spanish) CLT: 813-384-0416	2021-07-31	1
X06	21B	Notice Of Hearing Reminder	2021-09-09	10
X06	22B	Claimant's Change of Address Notification 2213 KENDALL SPRINGS APT 304 BRANDON FL 33510	2021-10-01	2

Non-Disability Development

Component	No.	Description	Received	Dates	Pages
X06	1D	Lead Protective Filing Worksheet		2018-07-18	2
X06	2D	Application for Disability Insurance Benefits		2020-03-26	7
X06	3D	Application for Supplemental Security Income Benefits (Abbreviated)		2020-03-26	8
X06	4D	Detailed Earnings Query		2020-08-12	7
X06	5D	Detailed Earnings Query		2021-04-26	3
X06	6D	Certified Earnings Records		2021-06-09	3
X06	7D	New Hire, Quarter Wage, Unemployment Query (NDNH)		2021-06-09	1
X06	8D	Summary Earnings Query		2021-06-09	1

Disability Related Development

Component	No.	Description	Received	Source	Dates	Pages
X06	1E	Work History Report		Arguijo, Rita Emilia	to 2018-09-14	11
X06	2E	Disability Report - Adult			to 2020-03-26	12
X06	3E	Disability Report - Field Office			to 2020-03-26	3
X06	4E	Work Activity Report SE			to 2020-03-26	8
X06	5E	Work Activity Report SE			to 2020-03-26	8
X06	6E	SSA-823 Report of SGA Determination-For SSA Use Only			to 2020-03-26	3
X06	7E	Function Report - Adult		Arguijo Garcia, Rita Emilia	to 2020-04-15	9
X06	8E	Work History Report		Arguijo Garcia, Rita Emilia	to 2020-04-15	3
X06	9E	Misc Disability Development and Documentation		DDS Tampa Fl	to 2020-05-21	2

X06	10E	Report of Contact	DDS Tampa Fl	to 2020-06-29	2
X06	11E	Pain Questionnaire / Report	Arguijo Garcia, Rita Emilia	to 2020-08-15	4
X06	12E	Disability Report - Field Office		to 2020-09-11	3
X06	13E	Disability Report - Appeals		to 2020-09-11	8
X06	14E	Representative Correspondence		to 2020-10-28	1
X06	15E	Misc Disability Development and Documentation	DDS Tampa Fl	to 2020-11-19	1
X06	16E	Disability Report - Appeals		to 2021-03-31	8
X06	17E	Disability Report - Appeals		to 2021-03-31	8
X06	18E	Disability Report - Field Office		to 2021-04-22	3
X06	19E	Disability Report - Appeals		to 2021-04-22	6
X06	20E	Exhibit List-CD to Representative or Claimant Form # HA-L56 (03-200)		to 2021-06-09	13
X06	21E	Work Background		to 2021-06-23	2
X06	22E	Recent Medical Treatment		to 2021-06-23	2
X06	23E	Medications		to 2021-06-23	2
X06	24E	Recent Medical Treatment		to 2021-06-29	2
X06	25E	Medications		to 2021-06-29	2
X06	26E	Work Background		to 2021-06-29	2
X06	27E	Resume of Vocational Expert	Jeffrey Lucas	2021-09-21 to	16
X06	28E	Correspondence regarding efforts to obtain evidence	Steinberg, Michael	2021-10-01 to	3

X06	29E	Report of Contact		DDS Carrollwood Fl	to 2021-10-05	1
X06	30E	Representative Correspondence Request Spanish Interpreter		Steinberg, Jacklyn	2021-10-06 to	1
X06	31E	Representative Brief			2021-10-05 to	5
X06	32E	Representative Correspondence Rep submit MER	Subsequent to hearing	Tampa Oho 10/14/2021	to 2021-10-14	1
X06	33E	Correspondence regarding efforts to obtain evidence	Subsequent to hearing	Steinberg, Jacklyn	to 2021-10-22	2

Medical Records

Component	No.	Description	Received	Source	Dates	Pages
X06	1F	Radiology Report		Rose Radiology	to 2014-12-04	3
X06	2F	Radiology Report		St Joseph Diagnostic Center	to 2016-10-15	6
X06	3F	Office Treatment Records		Gustavo Serrano Md	2015-06-17 to 2018-01-09	104
X06	4F	Office Treatment Records		Gustavo Serrano Md	2013-04-12 to 2018-01-09	101
X06	5F	Office Treatment Records		Gustavo Serrano Md	2017-10-05 to 2018-05-22	118
X06	6F	Office Treatment Records		Gustavo Serrano Md	2014-04-08 to 2018-05-22	152
X06	7F	Hospital Records		St Josephs Hospital	2013-04-25 to 2018-06-19	28
X06	8F	Office Treatment Records		Pulmonary Assoc Of Tampa	2017-03-31 to 2018-07-23	17
X06	9F	Office Treatment Records		Pulmonary Assoc Of Tampa	2017-03-31 to 2018-09-17	21

X06	10F	Office Treatment Records	Pulmonary Assoc Of Tampa	2018-01-19 to 2018-09-27	10
X06	11F	Consultative Examination Report	Lebowitz Medical Group Pa	to 2018-10-29	3
X06	12F	Office Treatment Records	Baycare Medical Group Orthopedic Surgery	2017-07-07 to 2018-11-06	19
X06	13F	Medical Evaluation/Case Analysis	SSA Oma FDDS	to 2018-12-06	1
X06	14F	Hospital Records	Florida Hospital Tampa	2018-02-08 to 2018-12-26	48
X06	15F	Copy of Evidence Request	St Josephs Adult Rehab Outpatient Svs	to 2019-02-21	6
X06	16F	Consultative Examination Report	Lebowitz Medical Group Pa	2019-03-26 to 2019-03-26	7
X06	17F	Consultative Examination Report	Lebowitz Medical Group Pa	to 2019-03-26	7
X06	18F	Office Treatment Records	Gustavo Serrano Md	2016-03-28 to 2019-06-11	23
X06	19F	Office Treatment Records	Optical Outlet	2019-08-14 to 2019-08-14	4
X06	20F	Office Treatment Records	Optical Outlet	2019-08-14 to 2019-08-14	7
X06	21F	Hospital Records	Advent Health Carrollwood	2019-04-03 to 2020-02-05	52
X06	22F	Office Treatment Records	Baycare Medical Group Orthopedic Surgery	2013-04-25 to 2020-02-07	71
X06	23F	Radiology Report	Ishwari Prasad Md	2014-06-26 to 2020-02-19	9

X06	24F	Office Treatment Records		Baycare Medical Group Orthopedic Surgery	2019-04-26 to 2020-03-06	20
X06	25F	Hospital Records		Adventhealth Tampa	2020-06-11 to 2020-06-17	29
X06	26F	Hospital Records		Adventhealth Tampa	2019-08-01 to 2020-06-18	55
X06	27F	Radiology Report		Akumin Tampa Armenia	to 2020-07-28	1
X06	28F	Consultative Examination Report		Rose Radiology Centers, Inc.	to 2020-07-28	3
X06	29F	Consultative Examination Report		Hope Counseling Centers	to 2020-11-25	4
X06	30F	Translated Medical Records			to 2021-07-16	5
X06	31F	Progress Notes		Dr Prasad	to 2020-02-06	3
X06	32F	Hospital Records		Advent Health	2020-02-05 to 2021-04-13	62
X06	33F	Progress Notes		Dr. Cosmo	2021-04-14 to 2021-08-03	9
X06	34F	Office Treatment Records REP SUBMITTED	Subsequent to hearing	Dr. Serrano	to 2021-07-01	5
X06	35F	Office Treatment Records REP SUBMITTED	Subsequent to hearing	Northside Mental Health Center	2021-04-28 to 2021-08-02	17

www.ssalawyers.com
mas4926@gmail.com

**MICHAEL A. STEINBERG
& ASSOCIATES**
4925 Independence Parkway
Suite 195
Tampa, Florida 33634-7540
(813) 221-1300
Fax (813) 221-1702 or
(855) 444-7932
Outside Tampa Call 800-875-8064

Attorneys:

Michael A. Steinberg, Esq.
Martin J. Cohen, Esq.
Susan S. Sandler, Esq.

Of Counsel:
Garry W. Miracle, Esq.
Byron E. Townsend, Esq.

November 29, 2021

REASON FOR DISAGREEMENT WITH DETERMINATION

RE: Rita Garcia Arguijo
SS: 589-76-0718

The Administrative Law Judge decision was in error in finding that the claimant had past relevant work as a fast food worker, DOT number 311.472-010

Although the claimant worked at a fast food restaurant, she did not perform the tasks set forth in the job description contained in Dictionary of Occupational Titles, regarding this job. Instead, it appears she performed the job of a fast food cook, DOT number 313.374-010, which is a medium exertional job.

Although on the surface, it may appear that this is harmless error, as the Administrative Law Judge found they were alternate light jobs the claimant could perform, the claimant is now only a few months shy of her 55th birthday, and, if the claimant could not perform past relevant work, given the residual functional capacity findings in the decision, the Medical/Vocational Guidelines would direct a finding of disabled, as of her 55th birthday. The finding that the claimant's past work was a fast food worker versus a fast food cook, may be entitled to res judicata effect, in a new claim.

Attached are job descriptions from the Dictionary of Occupational Titles for the occupation of fast food cook and fast food worker.

The claimant would request that the Appeals Council make a finding that the claimants past relevant work was that of a fast food cook. She would also request that the Appeals Council permit her to make a new application for benefits while the Request for Review is pending, given the fact that her age category will change to advanced age in the next few months.

MAS/vt
520026

Social Security

The Official Website of the U.S. Social Security Administration

Appeals Council Request for Review

You have successfully submitted Rita Arguijo's request on December 7, 2021 at 12:57:24 PM.

We highly recommend that you print or save a copy of the request for her records.

Print or Save

Do You Have Other Documents to Submit?

If you have originals, certified copies, or other paper documents you would like to include, you can print this personalized cover sheet .

If you are unable to print

Do you want to begin a new request for review?

We can copy your contact information into the appeal. You will have the opportunity to edit it later.

Start Another Request

Done

Social Security Administration
Supplemental Security Income
Notice of Award

SOCIAL SECURITY
2027 S PARSONS AVE
SEFFNER FL 33584

Date: March 27, 2025
BNC#: 25S1198G92583 DI

266 25S1198G92583

JACKLYN ARIEL STEINBERG
STE 195
4925 INDPDNC PKWY
TAMPA FL 33634

41227YO0500103 SBSFNA 0000000

COPY OF OUR LETTER TO RITA EMILIA ARGUIJO GARCIA, YOUR CLIENT

The following is an exact copy of a letter sent to RITA EMILIA ARGUIJO GARCIA today. Her address and telephone number are shown below. If you no longer wish to receive copies of letters that we send to her, please let us know.

2213 KENDALL SPRINGS
COURT APT 304
BRANDON FL 33510-2516
Telephone number: 813-384-0416

We also sent RITA EMILIA ARGUIJO GARCIA the publications shown in the Enclosure(s) block at the bottom of the letter. You can view these publications on our website at www.socialsecurity.gov or you may call us at 1-800-772-1213 to request copies.

********** ********** **********

On February 12, 2025, we made a decision on the request for reconsideration that you filed on a Supplemental Security Income (SSI) claim dated September 22, 2022. The decision was that you meet the medical requirements to receive SSI. We now find that you meet the non-medical rules. Because of this, you are eligible for SSI as of September 2022 based on being disabled.

The rest of this letter explains your current monthly payment, your back payments, how we figured your payment amount, information about Medicaid, your reporting responsibilities, and your appeal rights.

See Next Page