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**SOCIAL SECURITY ADMINISTRATION  
Office of Disability Adjudication and Review**

**DECISION**

**IN THE CASE OF**

Kristina Marie Townsend  
(Claimant)

(Wage Earner)

**CLAIM FOR**

Period of Disability and Disability Insurance  
Benefits

(Social Security Number)

**JURISDICTION AND PROCEDURAL HISTORY**

This case is before the undersigned on a request for hearing dated October 9, 2008 (20 CFR 404.929 *et seq.*). The claimant requested, and was granted, permission to testify telephonically due to her medical condition and was on telephone standby at a hearing held on September 9, 2009, in Tucson, Arizona. The claimant was not called upon to testify. The claimant is represented by Meghan M. Miller, an attorney.

The claimant is alleging disability since April 9, 2007.

**ISSUES**

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

There is an additional issue whether the insured status requirements of sections 216(i) and 223 of the Social Security Act are met. The claimant's earnings record shows that the claimant has acquired sufficient quarters of coverage to remain insured through December 31, 2011. 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 review of the entire record, the undersigned finds that the claimant has been disabled from April 9, 2007 through the date of this decision. The undersigned also finds that the insured status requirements of the Social Security Act were met as of the date disability is established.

**APPLICABLE LAW**

Under the authority of the Social Security Act, the Social Security Administration has established a five-step sequential evaluation process for determining whether an individual is

disabled (20 CFR 404.1520(a)). The steps are followed in order. If it is determined that 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, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20CFR 404.1520(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. 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, or work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned 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)). 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. 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.

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

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 404.1520(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, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 404.1520(e) and 404.1545; SSR 96-8p).

Next, the undersigned 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)). 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)), the undersigned 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(g) and 404.1560(c)).

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

1. **The claimant's date last insured is December 31, 2011.**
2. **The claimant has not engaged in substantial gainful activity since April 9, 2007, the alleged onset date (20 CFR 404.1520(b) and 404.1571 *et seq.*).**
3. **The claimant has the following severe impairments: status post exposure to toxigenic molds; cognitive disorder; depressive disorder (20 CFR 404.1520(c)).**

The above impairments result in more than a minimal impact on the claimant's ability to perform basic work activities and, thus, are severe impairments.

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

None of the claimant's impairments individually or in combination are accompanied by the signs and symptoms of the severity required in the Listing of Impairments.

The claimant has the following degree of limitation in the broad areas of functioning set out in the disability regulations for evaluating mental disorders and in the mental disorders listings in 20 CFR, Part 404, Subpart P, Appendix 1: moderate restriction in activities of daily living, mild to moderate difficulties in maintaining social functioning, moderate difficulties in maintaining concentration, persistence or pace, and no episodes of decompensation, each of extended duration.

5. **After careful consideration of the entire record, the undersigned finds that the claimant is and has been restricted to less than a full range of sedentary-level functioning due to her combined impairments and resulting limitations. She lacks the ability due to her impairments to sustain the pace and concentration required in an ordinary work setting on a regular and continuing basis (SSR 96-8p).**

In making this finding, the undersigned considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 404.1529 and SSRs 96-4p and 96-7p. The undersigned has also considered opinion evidence in accordance with the requirements of 20 CFR 404.1527 and SSRs 96-2p, 96-6p and 06-3p.

The claimant alleges disability and the inability to work due to chemical brain injury. She reports that she is unable to tolerate any type of chemical including colognes, perfumes, deodorizers. She also alleged short term memory loss.

The claimant's alleged symptoms and limitations are corroborated by the objective medical evidence. The claimant has described daily activities which are quite limited and which are consistent with her symptoms. The claimant's written testimony reports that she has difficulty staying focused, is easily fatigued, can only walk short distances and uses a wheelchair for grocery shopping. She indicates that family and friends assist her in remembering to do things such as paying bills. She experiences hypersensitivity to chemicals in the air, in foods and in cosmetics. (Exhibit 3E.) The claimant's symptoms and limitations are corroborated by third party statements submitted by the claimant's husband and a neighbor. (Exhibits 13E, 20F.) The claimant sought and received appropriate medical treatment for these symptoms and has consistently complied with prescribed treatment and physician recommendations.

The claimant's disability is supported by medical signs and findings. The record establishes the claimant's exposure to mold while working and living in the U.S. Virgin Islands in February 2007. A mycotoxin report from May 2007 showed 2.56 ppb of trichothecenes. In June 2007, the claimant was found to have hyperreactivity to fungi and had been colonized. Symptoms included excessive fatigue and cognitive deficits. (Exhibit 1F.)

Physically, the record documents extensive treatment under Michael R. Gray, M.D. In August 2007, Dr. Gray's diagnoses included status post exposure to multiple toxigenic structural mold (including aspergillus, penicillium and stachybotrys); mixed mold mycotoxicosis with features of encephalopathy; and immune toxicity. Symptoms included abnormal reaction time, balance disorder, decreased grip strength, abnormal visual field, compromised immediate verbal recall, intrapulmonary granulomatous changes, small airway obstruction with partial reversibility and autoimmunity evident targeting both central and peripheral nervous system myelin. Dr. Gray also diagnosed vasculitis and chemical hyperactivity syndrome. (Exhibit 4F, pp. 4-34.)

The claimant has undergone trigger point injections over the occipital, trapezius, infraspinatus, sciatic, trochanteric, epitrochlear, ante popliteal, temporal, supraorbital and suprasternal sites and the L2-3 muscles groups. (Exhibit 4F, p. 7.) The claimant also participated in physical and occupational therapy due to balance disorder secondary to toxic encephalopathy with limited results. (Exhibits 14F, 18F, 29F.)

Mentally, the claimant underwent a neurobehavioral evaluation in December 2007 conducted by B. Robert Crago, Ph.D. and was reported as presenting with elements of both an adjustment disorder with mixed emotions of depression and anxiety and an undifferentiated somatization disorder. (Exhibit 4F, pp. 52-68.) Cognitive test results led to a diagnosis of cognitive disorder, not otherwise specified with such deficits found to be temporally related to her toxic mold exposure. (Exhibit 5F.) A reevaluation of the claimant in June 2009 suggested significant improvement in certain areas of the claimant's executive functioning. However, she has suffered a generalized loss of cognitive efficiency and skills along with focal deficits in executive skills including working memory, concentration and processing speed. The claimant reported numerous examples of executive dysfunction including forgetting to do routine and non routine

tasks when her daily schedule is disrupted. It was noted that the claimant is unable to remember complicated procedures and must relearn things numerous times. Findings were consistent with the claimant's reports of slowed thinking and difficulties with cognitive processing. With regard to a somatoform disorder, the claimant was found to have demonstrated in therapy that she is aware of the effect of her health problems on her mood and did not present evidence of a somatoform disorder. She was found to express symptoms of depression and anxiety secondary to her health problems. Dr. Crago's assessment in June 2009 was depression secondary to health problems, loss of occupational and social role status and loss of "sense of self"; and cognitive disorder, not otherwise specified. He assessed the claimant with a GAF of 50, representing severe impairment in social and occupational functioning. (Exhibit 28F.)

After considering the evidence of record, the undersigned finds that the claimant's medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

The State agency medical consultants' physical assessments and psychological consultants' mental assessments are given little weight because the State agency consultants did not adequately consider the claimant's subjective complaints or the combined effect of the claimant's impairments.

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

The record demonstrates that the claimant has past relevant work as a retail sales manager. The demands of the claimant's past relevant work exceed the residual functional capacity.

**7. The claimant was a younger individual age 18-44 on the established disability onset date (20 CFR 404.1563).**

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

**9. The claimant's acquired job skills do not transfer to other occupations within the residual functional capacity defined above (20 CFR 404.1568).**

**10. Considering the claimant's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 404.1560(c) and 404.1566).**

In determining whether a successful adjustment to other work can be made, the undersigned 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 sedentary work, considering the claimant's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.28. However, the additional limitations so narrow the range of work the claimant might otherwise perform that a finding of "disabled" is appropriate under the framework of this rule. This conclusion is supported by Social Security Ruling(s) 96-8p and 96-9p.

**11. The claimant has been under a disability as defined in the Social Security Act since April 9, 2007, the alleged onset date of disability (20 CFR 404.1520(g)).**

#### DECISION

Based on the application for a period of disability and disability insurance benefits protectively filed on November 30, 2007, the claimant has been disabled under sections 216(i) and 223(d) of the Social Security Act since April 9, 2007.

Medical improvement is expected with appropriate treatment. Consequently, a continuing disability review is recommended in 12 months.

*/s/ Milan M Dostal*

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Milan M. Dostal  
Administrative Law Judge

October 7, 2009

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Date