

Administrative Decisions

Kid Wins On-the-Record

When medical and school evidence are enough to show disability, a hearing might be unnecessary. This was the experience of Kerie Stone, an attorney at Manhattan's MFY Legal Services, on behalf of a 9-year-old client. Kerie aimed for a target that would expedite a benefits award for the child.

Kerie's client was hit by a passing car and sustained a skull fracture and months of subsequent hospitalization, rehab, and psychiatric services. He also became easily angered over the extent of his injuries and limitations.

His mother applied for SSI, which the SSA denied initially and again upon reconsideration in November 2000. The state agency physician reported the child was able to perform most age-appropriate activities. Not surprisingly, in less than a month the child needed to be hospitalized again for psychiatric care.

Kerie filed a request for a hearing and contacted

OHA several times in order to have her client spared the ordeal of testifying. Chief ALJ Newton Greenberg agreed to Kerie's request to waive a hearing and to issue a favorable decision on the records submitted. The latest medical and school records were enough, in the ALJ's view, to show that the child suffered from the functional equivalents of listed impairments in several areas: mood disorder, behavioral disorder, and ADHD, all resulting from the June 2000 car injury.

Interestingly, the child's case was strengthened by two unsuccessful applications for benefits some years earlier. The ALJ reasoned that the current records, when viewed against the earlier records, served to demonstrate that the disability was of recent origin.

A golden bow award to Kerie for hitting her target straight on!

Appeals Council Reversals and Remands Galore

Thinking of taking your case to the Appeals Council? Take courage from the experience of Christopher Mesh from Segar & Sciortino and Jere Fletcher, a private practitioner. Both advocates successfully challenged the woeful decisions of ALJs, in one case winning a reversal on the record and in the other winning a remand for further hearing.

The Reversal

The Appeals Council took a dim view of an ALJ ruling that denied benefits to Christopher's client. The Appeals Council wrote that the ALJ "rejected the medical source opinions of multiple treating physicians," and that "the evidence of record compels a

conclusion that the claimant is disabled."

Additionally, the Appeals Council noted that the state agency physicians did not examine the client. Further, the Appeals Council stated that the consultant offered no opinion on the client's ability to sit and that the consultant's opinion was "at variance with every other treating and examining physician."

The Appeals Council also took note of the fact that the record showed Chris's client had, without success, fully cooperated with all regimens to manage his pain. According to the Appeals Council, this hardly supported the ALJ's assertion that the appli-

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DISABILITY LAW NEWS

SSA Issues Helpful Childhood Disability Q and A's – Part I

Every summer the Social Security Administration issues an important document that DAPPERS need to digest. This year SSA jumped the gun and issued the important document in spring.

In May 2001, SSA issued a compendium of procedural and substantive questions and answers on evaluating childhood disability claims under the final regulations that became effective on January 2, 2001. Many of the answers in this compendium track answers SSA gave to public comments published in the preamble to the final regulations [65 Fed Reg 54747-54775]. In the Q and A compendium the agency explains to its employees why and how these policies and procedures should be applied.

This document is a miscellany of interesting, and potentially useful, items. Each answer contains multiple citations to relevant regulations, POMS, SSRs or Disability Digest provisions, and many answers contain useful case examples. The Q&A's are organized topically and include indexes listing all the topics and questions. Each question is numbered, first by topic section and then in numerical sequence. Hence, "I-3" would denote the third question in topic section I. Each entry cited will be referred to as it is numbered in the document.

In this first of a two-part feature, we review some of the material in this document that may be helpful to advocates

including application of the final rules, processing childhood cases, using school records, using aptitude tests, and establishing a medically determinable impairment-factors that help determine how children function and ADHD & consultative examiners. In the September *Disability Law News* we will review combination of impairments, using the domains to assess a child's activities and each of the domains individually.

Application of the Final Rules

Function is considered throughout the sequential evaluation whenever function is an issue. Thus, functioning is considered at Step 2, ("Does the child have a medically determinable impairment(s) that is "severe?") and at Step 3, ("Does the child's medically determinable impairment(s) meet, medically equal or functionally equal the listings?").

At Step 2, "severe" means more than minimal functional limitations. [I-3] It also requires the existence of a medically determinable impairment to which to attach any functional restrictions. [III-1]

If a listing contains functional criteria, then a child whose impairment medically meets all requirements of the listing can be found medically disabled without further functional assessment. [I-3. See also VII-9, below]. While SSA

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