

(ON LETTERHEAD)

Office of Adjudication and Review

5107 Leesburg Pike

Falls Church, VA 22041-3255

RE: Willard Blaizer, Jr.

SSN: 227-11-1733

Dear Appeals Council:

This letter is submitted in further support of the Request for Review previously filed herein on behalf of the claimant, Willard Blaizer, Jr. Mr. Blaizer contends that the ALJ's decision in this case contains error of law and fact, requiring remand for further proceedings, as reflected below.

In addition, in accordance with 20 C.F.R. § 404.970(b), Mr. Blaizer has submitted new and material evidence in support of this claim. This evidence, which was submitted to the ALJ before she penned her decision, but is not addressed in it, includes the following Exhibits and Summaries:

Exhibit A Dr. Donald Clayton, Arnett Clinic, Frankfort, IN, a primary treating physician's progress reports from May 20, 2009 through June 3, 2009.

Summary: In this report, Dr. Clayton described Mr. Blaizer's condition thusly:

Congestive Heart Failure, Diabetes Type II, Hypertension, Hyperlipidemia and Obstructive Sleep Disorders, Glaucoma, Cataract, Fetal Alcohol Syndrome, Mild Retardation, Asthma, Emphysema/COPD, Hypertension, Seizure Disorder, and Sleep Apnea.

He noted that oxygen tanks had been prescribed for Mr. Blaizer because of his breathing issues. He indicated that Mr. Blaizer stands 5'5" and weighs 226 lbs.

He states that: "PFTs Severe emphysema with FEV 34% predicted. Needs continuous oxygen or destarurates. Severe obstructive lung disease with hyposemia. Needs to continue present meds and oxygen continuous. Also needs intermittent antibiotics for flare of bronchiectasis. Will provide with

copy of PFTs and medical evaluation as he is disabled from his lung disease and I suggest appealing the decision” (of the ALJ denying disability).

He noted that Mr. Blaizer had significant chest pain, swelling of the ankles and legs, and lower lumbar back pain.

Exhibit B Dr. David Regnier, Treating Physician, Arnett Heath Medical Group, Frankfort Clinic, April 24, 2009.

Summary: Dr. Regnier responded in letter form to a request for his opinion as to the condition and abilities of Mr. Blaizer. He wrote:

1. COPD with frequent exacerbations. Seeing pulmonary.
2. DM. Stable on metformin 500 bid.
3. Hypertension controlled with amlodipine 10, quinapril 40 and Lasix 20 qd, and Toprol XL 100 qd.
4. Hyperlipidemia. Stalb eo Omega 3 Fatty Acids to 2 grams bid and Crestor 20 qd.
5. GERD. Stable on omeprazole.
6. Seizure history. Stable on Depakote
7. Edema/CHF. BNP/BMP pending.
8. Lumbar pain – PRN Darvocet.
9. Mental Retardation. It is this, in addition to his other illnesses, which make employment impossible for him.

Exhibit C Dr. Duane Snider, DC CSCS, treating source, Snider Family Chiropractic, Frankfort, IN, May 12, 2009

Summary: Dr. Duane Snider wrote the following letter:

“To Whom It May Concern:

I have been a treating Chiropractic Physician for Willard Blaizer for several years and stand by my note on 08/27/07 (as submitted to the ALJ). Rarely do I take the time to give a blunt opinion on someones disability. However, Willard is such that case.

My opinion is that Willard is unable to work, period. He is a liability due to his physical incapacities and asthma to any employer and to himself. We have tried to progress with stretching, exercises and treatment with only slight improvement and expect no more progress. Willard has also been consistent with his attempt to get better.”

Additionally, Dr. Snider's treatment notes of April 15, 2009 indicate that the oxygen tank which was prescribed for Mr. Blaizer's breathing difficulties aggravates his lower back. He notes that because of his physical condition, Mr. Blaizer cannot lift or carry the oxygen cylinder for longer than Five (5) minutes at a time.

### SUMMARY OF ARGUMENTS

1. The ALJ erred in failing to find that Mr. Blaizer suffers from the following severe conditions: Congestive Heart Failure, Diabetes Type II, Hypertension, Hyperlibidiemia, Retardation, Asthma, and Sleep Apnea.
2. The ALJ erred in failing to find that the combination of Mr. Blaizer's medical conditions renders him disabled.
3. The ALJ erred in that she chose to render her own opinion in contrast to the congruent, complimentary, and supportive opinions of treating physicians Dr. Clayton and Dr. Regnier as well as treating source Dr. Snider in concluding that Mr. Blaizer's combination of severe impairments did not render him disabled.
4. The ALJ erred in that she refused to give credit and weight to Mr. Blaizer's subjective complaints of shortness of breath, back pain, and left leg pain even though his pain is supported by the assessment and objective medical evidence of treating sources and was reasonable under these circumstances.
5. The ALJ erred in failing to inquire of the Vocational Expert as to whether the limitation, as prescribed by treating sources, of the necessity to breathe via an oxygen cylinder would limit or prevent Mr. Blaizer from performing work in the national or local economy.

### ARGUMENTS

1. The ALJ erred in failing to find that Mr. Blaizer suffers from the following severe conditions: Congestive Heart Failure, Diabetes Type II, Hypertension, Hyperlibidiemia, Retardation, Asthma, and Sleep Apnea.

In her decision, the ALJ found that Mr. Blaizer suffers from severe Emphysema, Degenerative Disc Disease, Seizure Disorder and Obesity. Yet, the evidence submitted in this matter from Mr. Blaizer's treating sources objectively shows that Mr. Blaizer also suffers from severe Congestive Heart Failure, Diabetes Type II, Hypertension, Hyperlibidiemia, Retardation, Asthma, and Sleep Apnea.

In accordance with SSR-96-3, an impairment is considered severe if it “significantly limits an individual’s physical or mental abilities to do basic work activities.” SSR-3p further provides that “an impairment(s) that is ‘not severe’ must be a slight abnormality (or a combination of slight abnormalities) that has no more than a minimal effect on the ability to do basic work activities.”

While the objective medical evidence is clear, and the opinions of the treating sources agree that Mr. Blazier suffers from these severe conditions which prevent him from employment, the ALJ found to the contrary.

2. The ALJ erred in failing to assess or find that the combination of Mr. Blaizer’s medical conditions renders him disabled.

On Page 5, Point 4 of her decision, the ALJ discussed whether Mr. Blaizer’s impairments met or medically equaled one of the listed impairments of 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1.1525, 416.925 and 416.926), yet she only conducted the analysis as to Listing 1.04 for Disorders of the Spine and Listing 3.02 for Emphysema.

Specifically, the ALJ did not compare the objective medical evidence of record or the opinions of treating sources as to listings which potentially apply to Obesity, Congestive Heart Failure, Diabetes Type II, Hypertension, Hyperlipidemia, Retardation, Asthma, and Sleep Apnea. As such, the ALJ failed to assess the combination of Mr. Blazier’s medical conditions in determining whether or not his total condition meets or medically equals one or more of the listings. The ALJ started down the combination analysis road when she referred to one of the conditions, obesity, thusly on p. 10: “The undersigned also took into account that obesity can cause limitation of function . . . .The combined effect of obesity with other impairments may be greater than might be expected without obesity.”

Yet, her analysis halted at this point. There is no discussion as to how Mr. Blaizer’s Emphysema, Degenerative Disc Disease, Seizure Disorder, Obesity, Congestive Heart Failure, Diabetes Type II, Hypertension, Hyperlipidemia, Retardation, Asthma, Sleep Apnea, and the need to breath via an oxygen tank might all work in combination to prevent him from working.

3. The ALJ erred in that she used her own opinion rather than the congruent and complimentary opinions of treating physicians Dr. Clayton and Dr. Regnier, as well as that of treating source Dr. Snider, in determining that Mr. Blaizer’s combination of severe impairments did not render him disabled.

The ALJ determined that Mr. Blaizer’s condition did not meet or medically equal one or more of the listings without consideration of the objective medical evidence and

opinions of treating sources Dr. Clayton, Dr. Regnier, and Dr. Snider. Even though each of these physicians has treated Mr. Blazier for more than Two (2) years, is familiar with his circumstances, and is regarded by SSA rulings as in a 'better' position to assess the claimant's abilities, the ALJ disregarded each of these physician's professional opinions that Mr. Blazier is disabled as a result of his physical suffering and is unable to work.

4. The ALJ erred in that she refused to give credit and weight to Mr. Blaizer's subjective complaints of shortness of breath, back pain, and left leg pain even though his pain is supported by the assessment and objective medical evidence of treating sources and was reasonable under these circumstances.

Although oxygen has been prescribed for Mr. Blaizer (p.8, p.9) and the ALJ states on p. 7 of her decision that 'the claimant's complaints of back pain are well documented', she determined that Mr. Blaizer's complaints of shortness of breath, back pain, and left leg pain were not credible.

5. The ALJ erred in failing to inquire of the Vocational Expert as to whether the limitation, as prescribed by treating sources, of the necessity to breathe via an oxygen cylinder would limit or prevent Mr. Blazier from performing work in the national or local economy.

Even though the ALJ was aware that Mr. Blaizer's condition requires that he breathe through the use of an oxygen tank, she did not ask the Vocational Expert whether this requirement constituted a limitation which would prevent Mr. Blaizer from performing work in the national or local economy. While it is possible that his need for an oxygen tank would be cumbersome in the work place, it also seems reasonable that the oxygen cylinder's potential to explode might disqualify Mr. Blazier from certain types of employment and should be considered in this analysis.

## CONCLUSION

Mr. Blaizer specifically requests that the Appeals Council consider his entire case to determine whether review should be granted pursuant to 20 C.F.R. § 404.970(a). The foregoing list of errors is not exhaustive and only represents the more significant errors upon which the Appeals Council could readily determine that remand or reversal is required. The Appeals Council is required to evaluate the entire case to determine if any other basis for granting review exists as set forth by 20 C.F.R. § 404.970(a). If the Appeals Council intends to limit its review to only those issues specifically raised herein, or to raise other issues, Mr. Blazier hereby requests specific notice of such intent as well as the opportunity to submit additional arguments within 30 days of receipt of such notice as well as a copy of any new exhibit list and copy of the hearing tape.

Based on the foregoing, Mr. Blazier respectfully requests that the Appeals Council reverse the ALJ's decision and remand this matter for further proceedings as set forth herein.

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