

November 16, 2024

Office of Hearings Operations
2201 Coronation Blvd
Second Floor, Suite 200
Charlotte, NC 28227

RE: James Edwin Dobby
SSN: XXX-XX-0000

PRE-HEARING BRIEF FOR A FULLY FAVORABLE DECISION

I. PROCEDURAL BACKGROUND

I represent Mr. James Edwin Dobby (Claimant) in his application for title II benefits. His claim was denied at initial and reconsideration. A hearing has been scheduled on December 4, 2024. Originally, Mr. Dobby applied for Title II Social Security benefits with an onset date of June 26, 2019. However, upon review of his work and earning history – he did work above substantial gainful employment after his original alleged onset date of June 26, 2014. Therefore, Mr. Dobby respectfully **amends his alleged onset date to his last date of work of December 22, 2020**. The record will show this date is medically significant. He has not engaged in substantial gainful activity since the alleged onset date of December 22, 2019.

II. VOCATIONAL FRAMEWORK

The Claimant is a forty-two-year-old male with two years of community college education. He has no past-relevant work in the past five years. His date last insured is December 31, 2025.

III. THEORY OF DISABILITY

The issue is whether the Claimant is disabled under the Social Security Act. The evidence discussed below shows the Claimant is not able to perform substantial gainful activity on a regular and continuous basis due to severe medically determinable impairments. He meets the listing requirements of 12.05 Intellectual Disorder.

IV. SEQUENTIAL EVALUATION

Step One: The Claimant has not engaged in substantial gainful activity since the alleged onset date. (See 20 CFR 416.971 et seq.)

Step Two: The Claimant suffers from the following severe and medically determinable impairments that considered singly and in combination would impose more than a minimal limitation on the Claimant's ability to perform basic work activities:

- **Borderline Intellectual Disorder**
- **Autism**
- **Attention Deficit Hyperactivity Disorder**
- **Unspecified Anxiety Disorder**
- **Speech Delay**

Step Three: The Claimant meets the requirements of Listing 12.05 Intellectual Disorder. Specifically, 12.05 Intellectual Disorder can be met if the claimant displays history of an intellectual disorder that began prior to the attainment of 22, a full scale IQ score of 70 or below, significant deficits in adaptive functioning currently manifested by marked limitation of two of the following areas of mental functioning: (a) understanding, remembering, or applying information, (b) interacting with others, (c) concentrating persist or maintaining pace, and (d) adapting or managing oneself. **Objective medical evidence supports Mr. Dobby has a full-scale IQ of 68** and has significant erosion of his ability to carry out simple and detailed instructions, maintain concentration, work in coordination with others without being duly distracted by them, interact with the public, complete a normal workday and workweek without interruptions from psychologically based symptoms, and perform consistent pace without an unreasonable number of rest periods

Step Four: The Claimant does not have any past relevant work.

Step Five: Even if the listing argument is found to be unpersuasive, the Claimant is incapable of performing any work otherwise available in the nation or regional economies due to his severe mental impairments. Accordingly, a finding of disabled is appropriate at step Five pursuant to 20 C.F.R. § 404.1569(d) or 416.969(d).

V. OBJECTIVE EVIDENCE ANALYSIS

Mr. Dobby suffers from severe mental and psychological deficits which precludes all work. He is forty-two years old and still lives at home with his mother. She is responsible for the cooking of his meals and taking him to his appointments. Specifically, Mr. Dobby is unable to perform substantial gainful employment due to *autism, attention deficit hyperactivity disorder, anxiety, borderline intellectual disorder, and a speech delay*. He experiences significant psychological disturbances that preclude him from performing appropriate concentration, recall, schedule, interaction, and pace required of even simple work.

On October 31, 2023, treating clinician James E. Smith, LCSW opined Mr. Dobby's autism spectrum disorder, attention deficit hyperactive disorder, social anxiety, and borderline intellectual function causes qualitative deficits of reciprocal social interaction, qualitative deficits verbal/non-verbal communication, marked difficulties in maintaining social functioning, and marked difficulties with concentration, persistence, or pace. (James Smith Treating Source Statement pg. 1 out of 3) **Mr. Smith further explained Mr. Dobby is completely unable to meet competitive standards of working in coordination with others and unable to complete a normal workday without psychological interruptions.** (Id. At pg. 2 out of 3)

Mr. Smith's opinion is supported by individual counseling session progress notes from December 16, 2022 through February 13, 2023 which document Mr. Dobby has "ongoing anxiety", complains he feels he "does not belong in the world", has an "IQ of either 67 or 68", and has continued difficulties with "nervousness, concentration, organizing, and forgetfulness". (13F/1) Mental examinations confirm retarded psychomotor movements, slow speech, sadness, depression, anxiousness, and impaired attention. (13F/2,3,7,8,15,16)

Mr. Smith's treating source opinion is also supported by findings from developmental evaluation reports on October 5, 2022, November 16, 2022 and December 13, 2022 with Janice Keener, Psy.D. at the Division of Developmental Pediatrics of the Children's Hospital of the Kings Daughter. (10F/30) Behavioral observations were significant for reduced sustained eye contact and **noticeable slow processing speed with verbal and nonverbal tasks**. (10F/31) Mr. Dobby underwent a Wechsler Adult Intelligence Scales – Fourth Edition individual test of cognitive abilities. Mr. Dobby received **a full-scale IQ of 68 with low average to very low verbal comprehension, borderline perceptual reasoning, borderline working memory, and extremely low processing speed**. (10F/32) The study found that he has **adaptive communication skills of a three-year-old, daily living skills of a one-year-old, and socialization skills of a two-year-old**. (10F/33) Mr. Smith's treating source opinion is further supported by the rest of the record as detailed below.

When Mr. Dobby was twelve years old (September 12, 2014) he underwent a psychological evaluation at the Coastal Counseling Center, PC. (4F/161) Behavioral observations noted "he doesn't speak much and seems to be very anxious". Moreover, **Mr. Dobby suffers from Tourette's disorder and is inclined to have problems controlling his urine and feces**. (4F/161) On a task assessing patience and self-control, D'Angelo achieved 39 correct responses out of 46 attempts, resulting in a borderline low score but a normal efficiency ratio of 0.85. On a subsequent vigilance and concentration task, he correctly responded to 44 of 45 stimuli, with one impulsive error, both within the normal range. (4F/162) A letter of medical necessity was drafted from the Pediatric Specialists in February 24, 2015 due to frequent bedwetting in his late teens. (4F/220)

Mr. Dobby presented to Speech-Language Pathologist Leslie Felton, M.S. on August 12, 2022 for a speech-language evaluation. (7F/1) **He spoke mostly in 8-10 word utterances** when answering questions that required an explanation. His speech was 100% intelligible when he spoke to an unfamiliar listener with a trained ear. His response time appeared adequate for evaluation scenarios presented. Dangelo's facial features were symmetrical. No drooling was present. **He was noted to have below average oral expression**. (7F/2)

Mr. Dobby presented to Sara Schneidmiller, Ph.D. for a consultative psychological evaluation on September 1, 2022. (8F/1) His mother reported he has problems with anxiety which he has had since the age of six years. He reports that he has difficulty with conversations and has difficulty knowing what to say during conversations. Mr. Dobby also reports situational anxiety, primarily in public and social situations. **His mother reports that he also does not like to have phone calls**. In the past, his mother reports that he was anxious when going outside or leaving home but now his anxiety is primarily limited to social situations. **He worries that he might mess up and that people will make judgments about him. He will not participate in team sports because he is afraid that he will mess up and people will be mad at him**. (8F/1) Mr. Dobby's mental status shows blunted affect. These findings are consistent with level 1 Autism Spectrum Disorder, Social Anxiety Disorder, and moderate Attention-Deficit Hyperactivity Disorder.

(8F/4) Ultimately, **Dr. Schneidmiller opined Mr. Dobby might have some difficulty tolerating the stress of the day-to-day work environment.** (8F/5)

Mr. Dobby presented to Timothy Brown, D.O. for a physical consultative examination on September 10, 2022. **His chief complaint was of autism with current symptoms of anxiety, social interaction difficulties, attention deficit hyperactive disorder, short-term attention, forgetfulness, and nervousness.** (9F/1) General observations were significant with **anxious mood and a flat affect.** (9F/3) Vital signs were reviewed and within normal limits and there were no physical limitations identified on assessment. However, Dr. Brown does dictate **the claimant demonstrated avoidance of eye contact throughout the encounter and relied on his mother for assistance with providing history and answering questions.** Some additional prompting was required to answer simple questions at times. (9F/6)

VI. CONCLUSION

We respectfully request a fully favorable decision finding Mr. Dobby disabled under the Social Security Act. The evidence demonstrates that Mr. Dobby **meets the criteria for Listing 12.05 Intellectual Disorder**, showing his inability to sustain substantial gainful activity due to severe deficits in cognitive, psychological, and social functioning. His full-scale IQ of 68, significant adaptive functioning impairments, and marked limitations in understanding, remembering, or applying information; interacting with others; maintaining concentration, persistence, or pace; and adapting or managing oneself are well-documented. Reports from treating clinician James E. Smith, LCSW, and other medical professionals, along with objective testing and consistent records, substantiate lifelong impairments that began before age 22.

Respectfully Submitted,

Representative