

**SOCIAL SECURITY ADMINISTRATION
OFFICE OF DISABILITY ADJUDICATION AND REVIEW**

TRANSCRIPT

In the case of:

Olin Waters

Claimant

Claim for:

Period of Disability

Disability Insurance Benefits

Wage Earner

(Leave blank in SSI Claims, or if the name is the same as above.)

208-54-9959

Social Security Number

Hearing Held at:

Lake Alexanderbury, Utah

(City, State)

November 5, 2021

(Month, Day, Year)

by:

Evie McCullough

(Administrative Law Judge)

APPEARANCES:

Olin Waters, Claimant

Garry Moen-Simonis, Attorney for Claimant

Dena Legros, MD, Medical Expert

Bernita Kutch, Vocational Expert

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Olin Waters

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208-54-9959

(The following is a transcript of the hearing held before Evie McCullough, Administrative Law Judge, Office of Disability Adjudication and Review, Social Security Administration, on November 5, 2021, at Lake Alexanderbury, Utah, in the case of Olin Waters, Social Security number 208-54-9959. The claimant appeared by video and was represented by their attorney, Garry Moen-Simonis. Also present were Dena Legros, MD, Medical Expert, Bernita Kutch, Vocational Expert, and Reymundo Boyle, Hearing Reporter.)

(The hearing commenced at 06:34 AM, on November 5, 2021.)

OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

ALJ: Good morning everyone, I'd like to take just a moment to welcome all parties to this hearing, which is currently taking place at 8:00 AM, Eastern Standard Time. Claimant Olin Waters, your appearance here today via video conference indicates that we've made the necessary accommodations for you to participate remotely, but please be advised that, as per our previous correspondence, you are entitled to an in-person hearing if so desired. Your Social Security Number is 208-54-9959. With you today, Mr. Waters, is your attorney, Garry Moen-Simonis. I'd like to take a moment to acknowledge the presence of two expert witnesses who will be providing testimony in this matter: Dena Legros, our medical expert, whose background includes extensive experience in treating patients with chronic pain management; and Bernita Kutch, our vocational expert, who has worked with numerous clients to develop tailored work plans. Mr. Moen-Simonis, are you prepared to proceed?

ATTY: Yes, we're ready to proceed.

ALJ: So, I'm going to just reiterate that we've got Mr. Waters here with us via video conference, and his attorney, Garry Moen-Simonis, is also present. Mr. Moen-Simonis indicated that they're ready to proceed. Just to confirm, you did say yes, you're ready to go ahead, isn't that correct? Now, let me just clarify something for Mr. Waters here, as we had previously discussed the possibility of an in-person hearing. We can still switch formats if he'd like. If he'd prefer to do so, we could potentially reschedule and hold this hearing in person. Alternatively, we can continue with the current remote setup. So, Mr. Waters, what would you prefer? Would you like us to proceed as planned, or would you like to make the switch to an in-person format?

CLMT: No need to change, I'm good with this remote setup.

ALJ: Alright then, Mr. Waters, just to confirm, you've indicated that you're comfortable proceeding with this remote setup via video conference. That's perfectly fine. I'd like to take a moment to review some background information on the expert witnesses who will be testifying today. We have here with us Ms. Bernita Kutch, our vocational expert, whose resume indicates extensive experience in developing work plans for clients with various impairments and conditions. Additionally, we have Dr. Dena Legros, our medical expert, who has treated patients with chronic pain management and related issues. Both of these experts will be providing valuable insight into Mr. Waters' condition and its impact on his ability to perform daily tasks and maintain

employment. Now, just to confirm, Mr. Moen-Simonis, is there anything else that you'd like to collect or review before we proceed? Any additional documents or information that you believe would be relevant to this case?

ATTY: No, I believe we're all set at this point, Your Honor. My client's record is fully developed, and we don't see any need to introduce any additional evidence or testimony at this time.

ALJ: Thank you, Mr. Moen-Simonis. I concur with your assessment that all relevant evidence has been presented and there is no need for additional submissions at this time. With that said, I'd like to admit Exhibits 1A through 12C, as well as all attachments thereto, into the record of this proceeding.

(Exhibits, previously identified, were received into evidence and made a part of the record.)

ALJ: I'd like to pause for just a moment and review some of the documentation we've received so far. I believe it's been indicated that Mr. Waters has been receiving ongoing treatment from Dr. Markel at Mountainview Medical Center, but upon reviewing his file, I notice that there seems to be an inconsistency in the dates listed on Exhibit 7A versus the dates noted in the medical records provided by Dr. Markel himself. It appears to me that these discrepancies might potentially impact our understanding of Mr. Waters' overall condition and its progression over time. Now, I'd like to clarify with you, Mr. Moen-Simonis - if I'm not mistaken, is it your position that the dates on Exhibit 7A are

accurate as they stand? Or should we perhaps consider amending this exhibit to reflect what's actually recorded in Dr. Markel's own notes?

ATTY: Yes, upon reviewing Exhibit 7A and the medical records from Dr. Markel, I concur that there are discrepancies in the dates listed. Specifically, it appears that Dr. Markel's notes reflect a more accurate timeline of Mr. Waters' treatment and condition progression than what is recorded on Exhibit 7A. I believe it would be in the best interest of this proceeding to amend Exhibit 7A to accurately reflect the dates as noted by Dr. Markel. If possible, we could revise the exhibit to include a corrected version of the dates, taking into account the information from Dr. Markel's medical records.

ALJ: I understand that you're requesting to amend Exhibit 7A to accurately reflect the dates as noted by Dr. Markel's medical records. I acknowledge this request and will instruct our clerk to make the necessary revisions. Mr. Waters, are you aware that amending Exhibit 7A could potentially impact any prior decisions or determinations made in your case, even if the outcome of this hearing ultimately favors you?

CLMT: Yes, I'm aware that amending Exhibit 7A could impact prior decisions or determinations made in my case.

ALJ: I understand that you're aware of the potential impact on prior decisions or determinations made in your case if Exhibit 7A is amended. I'd like to note this for the record, and as we've

discussed, Mr. Moen-Simonis has requested an amendment to Exhibit 7A to accurately reflect the dates noted by Dr. Markel's medical records. Reymundo Boyle, can you please make a notation in the record regarding this request and amendment? Now, let's proceed with questioning and answering with you, Mr. Waters.

(The claimant, OLIN WATERS, having been first duly sworn, testified as follows:)

EXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE:

Q Now that we've established our sworn testimonies, Mr. Waters, can you please state your full name for the record?

A Olin Addison Waters

Q Your mailing [phonetic] Waters?

A 211 Bahringer Village Suite 113, Whiteshire, Idaho
96346-5993

Q Were you last insured on January 31, 2018?

A Yes, I was last insured on January 31, 2018.

Q What is your highest level of education completed?

A I completed a certificate program in computer programming from the Idaho Technical Institute, which I finished in May 2005.

Q What was your last job before becoming disabled?

A My last job before becoming disabled was as a school bus driver for the Whiteshire School District, where I worked from January 2007 until May 2019 when my physical limitations made it difficult to continue driving safely.

Q As a school bus driver for Whiteshire School District,

can you describe your specific duties and responsibilities?

A As a school bus driver for Whiteshire School District, my specific duties and responsibilities included safely transporting students to and from school, supervising them on the bus, and maintaining discipline when necessary. I was also responsible for monitoring student behavior during transit, reporting incidents or concerns to administrators, and adhering to strict safety protocols such as pre- and post-trip inspections of the vehicle and following designated traffic routes.

Q Were you ever employed by or contracted with the Social Security Administration at any point?

A No, I was never employed by or contracted with the Social Security Administration at any point.

Q Alright then, Mr. Waters, I affirm that you were never employed by or contracted with the Social Security Administration at any point. Now, let's move on to the matter at hand: your alleged disability. You previously filed a claim for disability benefits, citing various physical and mental limitations as reasons why you're no longer able to work. Can you please explain in your own words why you believe you are disabled?

A Well, I'm pretty sure that I'm disabled because of my diabetes and all its complications, like high blood sugar levels, which is just a real challenge to deal with on a daily basis, you know? It's not easy managing your sugar levels and making sure they're not too high or too low. And it's not just about taking

medication; it's about the constant monitoring and adjusting that needs to be done. Sometimes my sugar levels get really out of whack, and I end up feeling terrible, with headaches, fatigue, and dizziness. It's like my body is in a state of chaos, and I'm just trying to keep everything under control. And it's not just the physical symptoms; there's also the mental toll that comes with living with diabetes, the anxiety and stress of always being on edge about your health. I mean, I've had times where I've gone out to eat or travel, and my sugar levels have gotten really high, and I end up in a hospital emergency room. It's just not a good feeling, knowing that you're one step away from a serious health crisis at any given time. And then there are the complications, like neuropathy; my feet and hands hurt all the time, and I'm always worried about losing sensation or getting ulcers. And retinopathy is another big concern of mine; I've had to get eye exams more frequently because of it, and I'm always on edge about whether or not I'll lose my vision. And kidney disease... well, that's just a ticking time bomb, isn't it? The thought of having to go through dialysis or a transplant is just terrifying. So yeah, all these factors combined have really taken a toll on me, and I feel like I'm no longer able to work because of the constant health issues and the fear of losing my vision or my kidneys failing.

Q I acknowledge and affirm that you believe you are disabled due to complications from diabetes, including high blood

sugar levels, neuropathy, retinopathy, and kidney disease, which you claim have led to physical symptoms such as headaches, fatigue, dizziness, and pain in your feet and hands, as well as mental health concerns like anxiety and stress. You further state that these conditions make it difficult for you to work and maintain daily life without fear of serious health crises.

A Yes, I'm absolutely convinced that my diabetes and its complications are the main reasons why I'm no longer able to work or even maintain a normal daily life. It's like my body is just constantly fighting this battle against high blood sugar levels, which can cause all sorts of problems, you know? And it's not just about the physical symptoms; there's also the emotional toll that comes with living with diabetes. I mean, I've had to deal with so many health scares over the years, from going into diabetic shock to having to get my insulin pump refilled every few days. And let me tell you, it's no picnic trying to manage your diet and exercise when you have neuropathy in your feet; it's like walking on eggshells all the time, never knowing when you're gonna lose feeling or get an ulcer. And don't even get me started on retinopathy; I've had to get eye exams every few months just to make sure my vision isn't deteriorating any further. It's a constant worry, always wondering if I'm gonna lose my sight or have to deal with another health crisis. And then there's kidney disease; it's like this ticking time bomb in the back of my mind, always knowing that one day I might have to go through dialysis or

get a transplant. So yeah, all these factors combined have really taken a toll on me, and I feel like I'm no longer able to work because of the constant health issues and the fear of losing my vision or my kidneys failing.

ALJ: I acknowledge and affirm that you believe your diabetes and its complications are the primary reasons for your inability to work or maintain a normal daily life. I understand that living with diabetes comes with numerous challenges, including managing blood sugar levels, dealing with physical symptoms like neuropathy and retinopathy, and coping with the emotional toll of constantly worrying about health crises. It's also clear that you're concerned about kidney disease and the potential need for dialysis or a transplant. As I understand it, your condition affects not only your physical well-being but also your mental health, causing anxiety and stress related to managing your diabetes. Based on our discussion, it appears that your symptoms are severe enough to interfere with daily life activities and work-related tasks. Now, regarding the documentation for your insulin pump and refills, I need you to provide me with a detailed list of all prescription medications, including dosages, and any related medical records from your primary care physician or endocrinologist, as this information will be crucial in assessing your eligibility for SSD benefits.

ATTY: I'd like to clarify that we've already provided detailed documentation of Mr. Waters' insulin pump and

prescription medications, including dosages, to the agency. Additionally, we've submitted multiple medical records from his primary care physician and endocrinologist, which include regular check-ups, test results, and treatment plans related to his diabetes and its complications. These documents are available for review in the case file and have been updated regularly to reflect any changes in Mr. Waters' condition or treatment plan.

ALJ: I acknowledge that detailed documentation of Mr. Waters' insulin pump and prescription medications, including dosages, has been provided to the agency, as well as multiple medical records from his primary care physician and endocrinologist. I would like to focus on one specific symptom you've mentioned earlier: diabetic neuropathy in your feet. Can you elaborate on how this condition affects your daily activities, such as walking or standing for extended periods? How has it impacted your ability to perform tasks that require physical labor or prolonged standing?

BY ADMINISTRATIVE LAW JUDGE:

A Diabetic neuropathy makes it painful for me to walk or stand for long periods. It's like my feet are on fire, and I have to take breaks constantly. It affects my ability to work because I can't even do simple tasks without experiencing severe pain in my feet.

Q Can you tell me, Mr. Waters, did you see a doctor specifically for treatment of diabetic neuropathy in your feet?

Were there any recommendations or treatments provided to help manage this symptom and reduce the pain?

A Yes, I saw a doctor specifically for treatment of diabetic neuropathy in my feet. The doctor recommended using a custom orthotic shoe and providing me with pain medication to help manage this symptom.

Q How often do you experience pain in your feet due to diabetic neuropathy when standing or walking, and does this pain prevent you from performing daily activities or working for an entire day?

A Honestly, I'd say I experience pain in my feet at least 3-4 times a week when standing or walking for extended periods, and it's usually severe enough to make me stop what I'm doing and rest. It prevents me from performing daily activities that require prolonged standing or walking, like grocery shopping or even just going for a walk around the block, and sometimes it lasts for an entire day after a particularly painful episode.

Q You experience severe pain in your feet due to diabetic neuropathy at least 3-4 times a week when standing or walking for extended periods, often preventing daily activities and sometimes lasting an entire day.

A Yes, that's correct. The pain can get so severe at times that I've had to use a walker or cane just to get around the house, and even then it's not easy. There have been instances where the pain was so intense that I couldn't leave my bed for

days because every step felt like torture.

Q I understand that diabetic neuropathy significantly limits your mobility and activities of daily living.

A To be honest, it was like my feet were screaming at me to stop moving. The pain was so intense that I couldn't even stand for short periods without feeling like I was going to collapse. There was one instance where I had to cancel a planned family dinner because the thought of getting dressed and walking to the car was too overwhelming. My wife had to bring dinner home because I just couldn't face the pain. It got to the point where I was struggling to take care of myself, let alone work or do anything else.

Q I understand that diabetic neuropathy has become so debilitating that even simple tasks are too overwhelming to attempt.

A One of the things I miss the most and feel like I've lost completely is being able to walk my young granddaughter to school on her first day of kindergarten. It's something that seems so simple to others, but for me, it was always a special moment, and now I'm not even able to accompany her down the sidewalk without feeling like I'm going to collapse from pain.

Q I acknowledge that diabetic neuropathy has severely impacted your quality of life and taken away from you significant experiences like walking your granddaughter to school on her first day of kindergarten.

A I've also lost the ability to mow my own lawn or even tend to my garden like I used to. Simple tasks that were once so enjoyable for me are now too much to handle due to the pain and fatigue from diabetic neuropathy.

Q Is it noted in your medical records from Dr. Smith's office dated August 10, 2022, that you reported being unable to mow your lawn or tend to your garden due to pain and fatigue from diabetic neuropathy?

A Yes, that's correct.

Q On March 15, 2022, were you taking Azulixin for your diabetes management?

A According to my medication list from March 15, 2022, yes, I was taking Azulixin for my diabetes management at that time.

Q Were you also taking Sitagliptin on March 15, 2022, for control of your blood sugar levels?

A Yes, I was also taking Sitagliptin on March 15, 2022, as part of my treatment plan for controlling my blood sugar levels.

Q I've reviewed your medication list from March 15, 2022, and it appears that you were taking Azulixin for diabetes management as well as Sitagliptin for controlling blood sugar levels. However, on August 10, 2022, your medical records indicate that you started taking Victoza in addition to these medications. Can you explain why there's a change in medication from March 15, 2022, to August 10, 2022?

A My doctor added Victoza to my regimen because of a

concern about kidney damage from long-term use of Azulixin and Sitagliptin.

ATTY: I'd like to clarify that my client did not mean to imply that Victoza was added solely due to a concern about kidney damage from long-term use of Azulixin and Sitagliptin. In fact, Dr. Smith's office notes from August 10, 2022, indicate that the addition of Victoza was also intended to help manage my client's blood sugar levels more effectively and reduce their HbA1c readings. Additionally, it's worth noting that our medical team has been exploring other treatment options for my client's diabetes management, including considering the potential benefits of a SGLT2 inhibitor such as Invokamet or Farxiga to further mitigate kidney damage risks.

ALJ: I understand that the addition of Victoza to your medication regimen was intended to help manage blood sugar levels more effectively and reduce HbA1c readings, as indicated by Dr. Smith's office notes from August 10, 2022. Additionally, our medical team has been exploring other treatment options for diabetes management, including SGLT2 inhibitors such as Invokamet or Farxiga to mitigate kidney damage risks.

BY ADMINISTRATIVE LAW JUDGE:

A Yes, that's correct. We're also looking at other treatment options like Invokamet or Farxiga to reduce kidney damage risks.

Q I'd like to bring up the issue of your client's recent

hospitalization on September 2, 2022, due to a severe case of diabetic ketoacidosis, which required immediate medical attention and resulted in a three-day stay. How does this incident impact our understanding of your client's current condition and treatment plan?

A My hospitalization due to diabetic ketoacidosis was a serious wake-up call for me and my medical team. It highlighted just how far out of control my diabetes has become, even with all the treatment options we've tried so far.

Q It appears that despite the multiple treatment options and medications we've discussed, your condition has worsened to the point of requiring hospitalization for diabetic ketoacidosis. Additionally, reviewing your medical records reveals a new symptom not previously mentioned - severe numbness in your hands. Can you describe this sensation and how it affects your daily activities?

CLMT: The numbness in my hands is like pins and needles, but it doesn't go away. It's always there, making everyday tasks difficult to perform.

BY ADMINISTRATIVE LAW JUDGE:

A Was the numbness in your hands a symptom that you've experienced in the past, or is this a new development? Were there any previous treatments or interventions for this specific symptom?

Q This is a new development, and I haven't had any previous treatments or interventions specifically for this symptom.

A This new development suggests that your condition is progressive and worsening.

Q The numbness in my hands isn't directly related to my primary complaints of diabetic neuropathy and foot pain.

A You previously mentioned experiencing pain so severe that it prevented you from leaving your bed for days due to every step feeling like torture. How does this new numbness in your hands affect your daily functioning and ability to perform activities of daily living?

Q The numbness in my hands has added an extra layer of difficulty to my daily life. It's making simple tasks like dressing myself, brushing my teeth, and even holding onto objects challenging. I find myself struggling to perform everyday activities that most people take for granted because of the constant numbness.

A I acknowledge that the numbness in your hands has significantly impacted your daily functioning and ability to perform activities of daily living.

Q It's affecting everything, from tying my shoes to cooking meals. Simple actions become daunting tasks because of the numbness and lack of feeling.

A The numbness affects daily functioning significantly. Are you able to manage your diabetes effectively with current treatment plan?

Q [INAUDIBLE]

A Current treatment plan is ineffective.

Q My blood sugar levels are still uncontrolled.

A Your blood sugar levels remain uncontrolled.

Q My feet [phonetic] becoming increasingly sensitive to pressure.

A You're experiencing increased sensitivity of your feet to pressure.

Q I'm also experiencing severe pain in my lower back.

ALJ: You're experiencing severe pain in your lower back.

ATTY: I acknowledge that my client's condition is progressive and worsening, with uncontrolled blood sugar levels, increased sensitivity of feet to pressure, severe pain in lower back, and constant numbness in hands.

ALJ: Acknowledged.

EXAMINATION OF MEDICAL EXPERT BY ATTORNEY:

Q Given my client's severe pain in lower back and worsening neuropathy symptoms, isn't it clear that they've met the required severity threshold for total disability?

A Yes.

Q Isn't the severe numbness in my client's hands and lack of feeling, combined with uncontrolled diabetes, sufficient to meet the requirements for total disability under Section 8?

A Yes.

Q Given my client's severe and progressive condition, I'd like to highlight that they've never been able to maintain any

level of employment or even participate in meaningful activities due to their inability to walk, stand, or perform daily tasks without significant pain and fatigue. In fact, my client's lack of ability to take care of themselves, including managing their diabetes, is a critical issue that has been consistently documented throughout their medical records. Can we agree that my client's total disability is directly related to their inability to care for themselves and maintain basic personal hygiene due to their severe neuropathy symptoms?

A Yes, that's exactly what's been going on with me. I mean, it's not just about being unable to work or do things, it's also about being unable to take care of myself, including managing my diabetes, because of the severe pain and fatigue, and the numbness in my hands, which makes even simple tasks like eating and bathing a real struggle for me. And it's not just about the physical stuff either, it's also about the emotional toll all this has taken on me. I've been feeling really down and hopeless lately, just trying to get through each day without too much pain or discomfort. So, yeah, I think we can agree that my total disability is directly related to my inability to care for myself and maintain basic personal hygiene due to my severe neuropathy symptoms.

Q Given my client's consistent and severe symptoms, including daily hospitalizations for diabetic ketoacidosis, can we agree that their residual functional capacity is zero?

A Yes.

Q Noting that my client's medical records indicate a recent kidney function decline of over 30% due to prolonged poor diabetes management, can we stipulate that this significant decline renders them entirely incapable of performing even sedentary work tasks?

A Yes, given my kidney function decline of over 30% due to prolonged poor diabetes management, I'm unable to perform even sedentary work tasks.

Q With my client's progressive kidney damage and loss of residual functional capacity, can we stipulate that they are entitled to disability benefits effective January 1, 2022?

A [INAUDIBLE]

Q Given Dr. Smith's testimony that my client's condition precludes even minimal exertion due to severe neuropathy and kidney damage, can we conclude that this meets the 'total disability' threshold as of January 1, 2022?

A Based on Dr. Smith's testimony, I believe my condition meets the 'total disability' threshold as of January 1, 2022.

Q Doesn't Dr. Smith's testimony specifically mention that my client's severe neuropathy and kidney damage make it impossible to even stand or walk for more than 5 minutes?

A Yes.

ATTY: Then it's clear that my client is totally disabled and entitled to benefits as of January 1, 2022.

ALJ: Just to confirm, Dr. Smith's testimony regarding my client's condition precluding even minimal exertion due to severe

neuropathy and kidney damage is being used as evidence to support the 'total disability' threshold as of January 1, 2022?

ATTY: [INAUDIBLE]

ALJ: What is the expected life expectancy for someone with this level of kidney damage and uncontrolled diabetes?

ATTY: According to Dr. Smith's testimony and medical records, my client's life expectancy is significantly reduced due to chronic kidney disease stage IV with GFR of 30 and uncontrolled diabetes.

ALJ: What specific medical evidence supports the claim that their life expectancy is significantly reduced?

ATTY: The medical evidence supporting my client's significantly reduced life expectancy includes Dr. Smith's testimony and report, dated January 10, 2023, which notes a 50% reduction in estimated life expectancy due to chronic kidney disease stage IV with GFR of 30 and uncontrolled diabetes; and the medical records from St. Michael's Hospital, including lab results showing elevated creatinine levels and hemoglobin A1c levels consistently above 9%, indicating severe glycemic control issues.

ALJ: Can you clarify what specific lab results from St. Michael's Hospital indicate severe glycemic control issues?

ATTY: According to my client's medical records from St. Michael's Hospital, specifically, lab results dated February 22, 2022, show a hemoglobin A1c level of 11.4%, and on July 18, 2022, the result was 10.8%. These elevated levels consistently above 9%

indicate severe glycemic control issues.

BY ADMINISTRATIVE LAW JUDGE:

Q Thank you, Attorney, for presenting this extensive evidence. Now, Claimant, can you tell me about any recent changes in your condition or symptoms that may affect your ability to care for yourself?

A I've had a recent episode of severe foot edema, which has made it difficult for me to walk or stand due to intense pain and discomfort.

Q I acknowledge the recent episode of severe foot edema and its impact on your mobility.

A My condition is worsening.

Q Acknowledged. How has this worsening affected your daily activities and ability to care for yourself?

A I require assistance with daily activities.

Q You require assistance with daily activities due to worsening condition.

A I'm almost completely dependent on family for all care.

Q You are almost completely dependent on family for all care.

A I've lost all independence.

Q You've lost all independence.

A I need full-time care.

Q You need full-time care.

A My condition is terminal.

Q Acknowledged. How long do medical professionals estimate you have left?

A 6-12 months.

Q Terminal prognosis confirmed as 6-12 months.

A I accept terminal status.

Q Terminal status accepted.

A Benefits granted.

Q Benefits granted.

A Benefits granted.

ALJ: Benefits granted. Terminal status accepted. Claimant's condition deemed eligible for full benefits. Medical evidence presented by Dr. Dena Legros, a renowned expert with extensive experience in nephrology and endocrinology. His resume is available upon request and can be viewed on our website at socialsecurity.gov/experts/drdenalegros. I'd like to take this opportunity to thank the Claimant for their patience and cooperation throughout this process. Counsel, do you have any objections to Dr. Legros' medical expert testimony?

ATTY: No objections.

(The medical expert, DENA LEGROS, MD, having been first duly sworn, testified as follows:)

EXAMINATION OF MEDICAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q Dr. Dena Legros, please state your full name for the record.

A Dena Riley Legros

Q Dr. Legros, can you please briefly describe your education, licensure, and experience in nephrology and endocrinology?

A Well, my education includes a Bachelor of Science degree in Biological Sciences from the University of California, Los Angeles, and then I went on to earn my Doctor of Medicine degree from the same institution. After medical school, I completed my internal medicine residency at Cedars-Sinai Medical Center in Los Angeles. Following that, I pursued specialized training in nephrology and endocrinology through a fellowship program at Stanford University School of Medicine. As for licensure, I'm certified by the American Board of Internal Medicine in both internal medicine and nephrology, and I'm also certified in endocrinology, diabetes, and metabolism by the same organization. Throughout my career, I've had the privilege of working as a attending physician at several major hospitals, including Stanford Health Care and the University of California, San Francisco Medical Center. My areas of expertise include diabetic nephropathy, chronic kidney disease, hypertension, thyroid disorders, and insulin therapy management. I've published numerous peer-reviewed articles on these topics in prominent medical journals, such as the Journal of Clinical Hypertension and the American Journal of Kidney Diseases. Additionally, I've presented at several national conferences, including the annual meeting of the American Society of Nephrology and the Endocrine Society's

annual meeting. I'm also an active member of several professional organizations, like the American College of Physicians and the American Association of Clinical Endocrinologists.

Q Dr. Legros, are you familiar with diabetic nephropathy and its treatment options?

A Yes.

Q Had you an opportunity to review this claimant's case?

A Yes, I have.

Q Is there anything you want to bring to my attention that may appear inconsistent with the claimant's disability status?

A Upon reviewing the claimant's medical records and Dr. Smith's notes, I noticed that the claimant's creatinine levels were actually within normal limits during their last follow-up appointment, which seems to contradict the severity of kidney damage they're claiming. Additionally, I'd like to point out that the claimant was able to walk without assistance during the examination, despite their allegations of severe mobility impairment due to diabetic neuropathy. Furthermore, I've reviewed the medication list and noticed that the claimant is only on a moderate dose of metformin, which suggests that their diabetes isn't as uncontrolled as they're making it out to be.

Q Acknowledged discrepancies in medical records.

A Yes, I think it's essential to note that, as you've acknowledged, there are discrepancies in the medical records. Upon further review, I'd like to emphasize that the claimant's

creatinine levels were indeed within normal limits during their last follow-up appointment, which seems to contradict the severity of kidney damage they're claiming. Furthermore, I must reiterate that the claimant was able to walk without assistance during the examination, despite their allegations of severe mobility impairment due to diabetic neuropathy. Additionally, it's worth mentioning that their diabetes isn't as uncontrolled as they're making it out to be, considering they're only on a moderate dose of metformin. I'd like to bring up another point regarding the claimant's diet and lifestyle habits, which could have been better managed to improve their overall health condition. If the claimant had adopted a more balanced diet and engaged in regular physical activity, such as brisk walking or strength training, it might have helped mitigate some of the symptoms associated with diabetic nephropathy.

Q Acknowledged discrepancies in medical records and Dr. Legros' concerns regarding claimant's condition.

ATTY: I'd like to address Dr. Legros' concerns regarding the creatinine levels and mobility impairment. While it's true that the claimant's creatinine levels were within normal limits during their last follow-up appointment, I'd like to point out that the claimant has a history of fluctuating kidney function, which can be common in patients with diabetic nephropathy. As for the claimant's ability to walk without assistance, I'd argue that this doesn't necessarily contradict the severity of their mobility

impairment, given that they may have been experiencing periods of remission or improvement. Regarding Dr. Legros' comment on the claimant's diet and lifestyle habits, I agree that these factors could play a role in managing symptoms associated with diabetic nephropathy, but it's essential to consider the complexities of each individual case and not make assumptions based solely on general guidelines.

ALJ: Counterarguments noted, claimant's attorney raises valid points regarding fluctuating kidney function and remission periods.

ATTY: Dr. Legros, I'm representing the claimant. Can you clarify your expertise regarding diabetic nephropathy and its treatment?

ME: My expertise is in nephrology and endocrinology, specifically diabetic nephropathy, its pathophysiology, and treatment options. I've published research on novel therapies for chronic kidney disease and have experience managing complex cases of diabetic kidney damage.

ATTY: Dr. Legros, I'd like to clarify something regarding your previous statement about the claimant's creatinine levels being within normal limits during their last follow-up appointment. Could you tell us more about what you mean by 'within normal limits' and how that relates to the severity of diabetic nephropathy in this case?

ME: When I stated that the claimant's creatinine levels

were within normal limits during their last follow-up appointment, I was referring to the fact that their serum creatinine level, which is a marker of kidney function, fell within the reference range for our laboratory. Typically, a value between 0.7 and 1.3 mg/dL is considered normal. However, in the context of diabetic nephropathy, even values within this range can indicate some degree of kidney damage or impairment. In fact, some research suggests that even mild elevations in serum creatinine levels, such as those seen in patients with early-stage diabetic nephropathy, may be predictive of long-term renal decline and progression to end-stage renal disease. Therefore, while the claimant's creatinine level may have been within normal limits at the time of their last follow-up appointment, it does not necessarily rule out the presence or severity of diabetic nephropathy in this case.

ATTY: Dr. Legros, that's a fascinating point about even mildly elevated serum creatinine levels being predictive of long-term renal decline. However, I'd like to press you on this matter: aren't you saying, in effect, that the claimant's kidneys are already showing signs of damage, despite their current normal creatinine level? And if so, doesn't that suggest that their condition is more severe than they've been making it out to be?

ME: Yes, that's a correct interpretation of my previous statement. The presence of even mildly elevated serum creatinine levels can indeed indicate some degree of kidney damage or

impairment, which suggests that the claimant's kidneys may already be showing signs of damage despite their current normal creatinine level. This is consistent with the notion that diabetic nephropathy often progresses gradually over time, and it's possible that the claimant's condition is more severe than they've been making it out to be.

ATTY: So, Dr. Legros, isn't it true that even normal creatinine levels can mask underlying kidney damage in diabetic nephropathy patients, and that's what you're suggesting is happening here?

ME: Yes, that's correct. Normal creatinine levels can sometimes mask underlying kidney damage in diabetic nephropathy patients because serum creatinine is a relatively crude marker of kidney function, and it may not always detect early or mild impairments.

ATTY: So, Dr. Legros, I'd like to ask, isn't it possible that the claimant's current normal creatinine level is simply a temporary reprieve from the underlying damage, and doesn't necessarily indicate any significant improvement in their condition? And if so, wouldn't that suggest that they're still at risk for further kidney damage, despite what they may be saying about feeling better?

ME: Yes, that's a possibility. A temporary reprieve from underlying damage doesn't necessarily indicate significant improvement in kidney function. The claimant may still be at risk

for further kidney damage despite their current normal creatinine level.

ATTY: Dr. Legros, if the claimant's kidneys are indeed at risk for further damage despite their current normal creatinine level, wouldn't that suggest that they're still experiencing some degree of mobility impairment and pain due to diabetic neuropathy, which would be inconsistent with their claims about being able to walk without assistance?

ME: Yes.

ATTY: Dr. Legros, can a patient with severe diabetic neuropathy, who's at risk for further kidney damage, truly walk without assistance as the claimant claims?

ME: No, I would not expect a patient with severe diabetic neuropathy, who's at risk for further kidney damage, to walk without assistance. Patients with this level of disease typically experience significant mobility impairment, including difficulty walking or standing due to neuropathic pain and weakness in their lower extremities.

ATTY: Dr. Legros, isn't it true that a patient with severe diabetic neuropathy would likely experience significant numbness, tingling, and weakness in their lower extremities, making it extremely difficult to walk without assistance? And if so, wouldn't the claimant's claims about being able to walk without pain or difficulty be utterly inconsistent with this level of disease?

ME: Yes, that's correct. A patient with severe diabetic neuropathy would likely experience significant numbness, tingling, and weakness in their lower extremities, making it extremely difficult to walk without assistance. The claimant's claims about being able to walk without pain or difficulty are indeed utterly inconsistent with this level of disease.

ATTY: Dr. Legros, if the claimant's severe diabetic neuropathy is indeed causing significant numbness, tingling, and weakness in their lower extremities, as you've just confirmed, then how can they possibly assert that their condition has improved to the point where they no longer experience any pain or difficulty walking?

ME: Their claims are medically implausible.

ATTY: Dr. Legros, if their claims are medically implausible, does that not suggest to you that the claimant has been intentionally exaggerating or misrepresenting their symptoms for some reason, and if so, what do you think might be motivating them to do so?

ME: Yes, it's possible they're intentionally exaggerating their symptoms for potential financial gain or to avoid responsibility.

ATTY: Dr. Legros, if the claimant is intentionally exaggerating their symptoms for potential financial gain or to avoid responsibility, does that not suggest a level of desperation and manipulative behavior on their part? Does this not raise

serious concerns about their credibility as a witness in this case?

ME: Yes, if the claimant is intentionally exaggerating their symptoms for potential financial gain or to avoid responsibility, it suggests a level of desperation and manipulative behavior on their part, which raises serious concerns about their credibility as a witness in this case. This type of behavior can indicate a lack of integrity and honesty, making it challenging to rely on their testimony.

ATTY: I've asked all my questions, thank you Dr. Legros for your expert testimony.

BY ADMINISTRATIVE LAW JUDGE:

Q The medical records indicate a recent change in medication regimen. Can you explain, Dr. Legros, how this might impact the claimant's current condition and symptoms?

A The recent change in medication regimen likely involves a switch from one type of anti-diabetic or neuropathic pain medication to another, which may have varying effects on the claimant's current condition and symptoms. For instance, some medications may exacerbate certain side effects, whereas others might provide more relief from neuropathic pain. However, it's essential to note that this change could also lead to an adjustment period, where the claimant experiences increased or decreased symptoms before settling into a new therapeutic range.

Q According to Exhibit 12-A, the claimant's blood work from

February 10th shows a significant increase in HbA1c levels. How does this relate to their current condition and treatment regimen, Dr. Legros?

A An HbA1c level of above 9% indicates poor glycemic control, which can lead to worsening diabetic complications and neuropathy symptoms. This significant increase from their previous levels suggests that the claimant's current treatment regimen is not adequately managing their blood sugar levels, likely contributing to their ongoing pain and mobility issues.

Q Exhibit 15-B shows a medical note indicating the claimant's recent hospitalization for severe lower back pain. How does this interact with their reported symptoms of neuropathic pain and mobility issues, Dr. Legros?

A The claimant's recent hospitalization for severe lower back pain is consistent with their reported symptoms of neuropathic pain and mobility issues. The fact that they required hospitalization suggests that their condition has worsened, likely due to inadequate management of their diabetes and related complications. This further supports the notion that their current treatment regimen is not effective in managing their symptoms, leading to significant impairment in their daily activities.

Q I'd like to review Exhibit 20-C, which appears to be a physical therapy progress note from January 25th. Doctor, can you explain how this relates to the claimant's current mobility issues and treatment plan?

A Exhibit 20-C indicates that the claimant participated in physical therapy sessions from January 15th to January 25th, with a focus on improving mobility and reducing pain in the lower extremities. However, despite these efforts, the progress note notes moderate improvement, which suggests that their mobility issues persist. Furthermore, it appears that the claimant's treatment plan did not adequately address their underlying diabetic neuropathy, as evidenced by their continued complaints of severe pain and limited mobility.

Q As I'm reviewing Exhibit 27-D, which appears to be a prescription medication bottle label, Doctor, can you tell me what this indicates about the claimant's current treatment regimen and compliance with their prescribed medications?

A Exhibit 27-D appears to be a prescription medication bottle label for an anti-diabetic medication, specifically Metformin. The label indicates that the claimant has been prescribed a once-daily dose of 1000mg, which suggests that their current treatment regimen is focused on managing their diabetes. However, it's unclear from this document alone whether the claimant is adhering to their prescribed medication regimen or if there have been any changes made to their dosage.

ATTY: Dr. Legros, I'd like to clarify that Exhibit 27-D is actually a prescription bottle label for Lyrica, an anticonvulsant medication used to manage neuropathic pain, not Metformin as you mentioned earlier.

(The vocational expert, BERNITA KUTCH, having been first

duly sworn, testified as follows:)

EXAMINATION OF VOCATIONAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q Ms. Kutch, what were the physical demands and requirements of the claimant's previous job as a Bus Driver?

A Well, as a Bus Driver, the claimant's previous job required standing for long periods of time, often up to 8 hours per day, and frequent bending and stooping while loading and unloading passengers and luggage. They also had to be able to lift heavy objects, such as luggage racks and other equipment, which is considered medium to heavy physical activity. The claimant would have been required to work in a fast-paced environment, making rapid decisions in high-traffic areas, and would have had to maintain good communication skills with passengers and colleagues. As for the SVP level, Bus Driving is typically classified as an unskilled occupation, falling under SVP 3-4, semi-skilled. However, due to the complexity of navigation systems and other safety features, it's possible that some employers may consider it a skilled position, but generally speaking, it's considered semi-skilled. And, if I might add, Bus Drivers are required to work in a variety of weather conditions, including extreme temperatures, rain, snow, and so on.

Q Thank you, Ms. Kutch. Now, let's consider a hypothetical scenario where the claimant is looking for work as an Unloader, Profile 1. This job requires lifting and carrying heavy boxes,

working in a fast-paced warehouse environment, and standing for long periods of time. Would this type of job be consistent with the claimant's abilities, given their reported limitations?

A No.

Q Profile 1 is not suitable for the claimant's abilities. As for Profile 2, which requires light assembly tasks and may involve standing for some periods, but does not require heavy lifting or bending, would this type of job be consistent with the claimant's reported limitations?

A Yes

Q Based on our discussion about the claimant's severe diabetic neuropathy and its impact on their mobility and pain levels, I'd like to revisit a symptom from earlier - the claimant's reported numbness in their feet. Is this numbness causing them difficulties with walking or maintaining balance?

A No.

ALJ: Based on the Vocational Expert's testimony, it appears that the claimant may still be able to perform some jobs, such as those listed under Profile 2, despite their reported mobility issues. However, it is unclear at this time whether these jobs would be suitable given the claimant's pain levels and overall functional abilities. Therefore, I find it necessary to request additional information from the Vocational Expert regarding potential job accommodations that may be available for individuals with similar impairments. With that said, Counsel, do you have any

questions for the Vocational Expert?

ATTY: Yes, I'd like to clarify that Profile 2 tasks may require slight accommodations for individuals with similar impairments, such as regular breaks and adjustments to workspace layout.

EXAMINATION OF VOCATIONAL EXPERT BY ATTORNEY:

Q How would their poor glycemic control and resultant increased risk of seizures impact their employability?

A Well, regarding the claimant's poor glycemic control and increased risk of seizures, it would likely significantly impact their employability, as many workplaces may not be able to accommodate an employee who requires frequent breaks due to potential seizure episodes. Additionally, some job duties, such as operating heavy machinery or working with hazardous materials, would be completely unsuitable for someone with this condition. However, if the employer is willing and able to make accommodations, such as providing a safe workspace and allowing regular breaks, it's possible that the claimant could perform certain jobs in a modified capacity. But, I must reiterate, it would largely depend on the specific job requirements and the level of accommodation that can be provided.

Q Regarding the claimant's neuropathic pain and resulting fatigue, wouldn't this also pose significant challenges for their employability, making it difficult to maintain a consistent work schedule and meet job demands?

A Yes, absolutely, it would pose significant challenges for their employability, as neuropathic pain and resulting fatigue can indeed make it difficult to maintain a consistent work schedule, meet job demands, and even just get through the day without needing to take breaks or adjust one's work pace. I mean, it's not just about having the physical stamina to perform the job tasks, but also the mental endurance to cope with the pain and discomfort, which can be quite debilitating at times. And, of course, as we discussed earlier, there's the added concern of potential seizures due to poor glycemic control, which could further impact their ability to work consistently and safely. So, yes, it would indeed pose significant challenges for their employability, and I think that's been a major point of discussion throughout our testimony.

Q And what about their reported vision problems due to diabetic retinopathy? Would that also impact their employability, particularly in jobs requiring visual acuity or depth perception?

A Yes, their reported vision problems due to diabetic retinopathy could significantly impact their employability, particularly in jobs requiring visual acuity or depth perception, such as operating heavy machinery, driving, or working in construction or manufacturing settings. However, it's worth noting that the extent of their visual impairment would need to be assessed by an eye specialist to determine its impact on their ability to perform specific job tasks.

Q So, considering all these factors, it seems like their employability would be quite limited to jobs that are modified or accommodated to their specific needs, such as working from home or having a very flexible schedule. And I was wondering, what about the impact of their neuropathic pain on their ability to perform fine motor tasks? Would that also significantly affect their job prospects?

A Yes, their neuropathic pain can also significantly affect their ability to perform fine motor tasks, such as typing, using small tools or machinery, or handling delicate objects. This could limit their job prospects to certain unskilled or semi-skilled occupations that don't require precise hand movements or dexterity.

Q I'd like to revisit their claim of experiencing depression and anxiety due to their chronic pain and physical limitations. How would this impact their employability, particularly in jobs requiring social interaction or public speaking?

A Well, as we've discussed previously, their chronic pain and physical limitations can indeed have a significant impact on their mental health, leading to symptoms of depression and anxiety. And, you know, it's not just about their ability to perform job tasks, but also their overall well-being and ability to cope with the stress of working in certain environments. I mean, jobs that require social interaction or public speaking can

be particularly challenging for someone with these types of mental health issues, as they may struggle with feelings of embarrassment, shame, or inadequacy related to their physical limitations. And, you know, it's not just about being able to do the job, but also about being able to maintain a certain level of dignity and independence in the workplace. So, yeah, it could definitely impact their employability in jobs that require social interaction or public speaking.

ALJ: Thank you, Ms. Kutch, for your thorough and insightful testimony. I believe we've covered all relevant aspects of the claimant's employability given their reported impairments. To summarize, it appears that their chronic pain, physical limitations, neuropathic pain, vision problems due to diabetic retinopathy, depression, anxiety, and increased risk of seizures would significantly limit their job prospects, making it difficult for them to maintain a consistent work schedule, meet job demands, or perform specific tasks safely. I'd like to thank you again for your expertise and testimony, Ms. Kutch. Now, I'd like to turn to the claimant to see if they have any final remarks or comments before we conclude this hearing.

CLMT: Wow, thank you, Your Honor, for allowing me to share my story and for Ms. Kutch's remarkable testimony. I just want to say that being disabled is not just about limitations; it's about living with chronic pain, fatigue, and mental health struggles every single day. It's about trying to find meaning and purpose in

a world that often doesn't understand or accommodate our needs. But despite all the challenges we face, we are strong, resilient, and capable individuals who refuse to be defined by our disabilities. We are artists, activists, advocates, and allies, using our voices to create change and break down barriers. We are the ones who will challenge the status quo, push for inclusivity and accessibility, and fight for a world where everyone has equal opportunities and rights. My fellow claimants, I see you; I hear you; I believe in you. And to Ms. Kutch, thank you for being our voice, our advocate, and our friend. Your testimony will inspire countless individuals to keep pushing forward, to never give up, and to always speak out against injustice. This is not just a hearing about my claim; it's a movement about human rights, dignity, and the pursuit of happiness for all people with disabilities. And I say to you all, let us rise above our limitations, let us break free from the chains of stigma and shame, and let us create a world where everyone can thrive, regardless of their abilities or disabilities. Thank you.

ALJ: Thank you, Ms. Kutch, for your invaluable testimony and expertise. I'd also like to thank the claimant for their powerful statement and resilience. This concludes our hearing today. I appreciate everyone's participation and cooperation.

VE: Thank you, Your Honor.

CLMT: Thank you for listening.

ATTY: Thank you, Your Honor.

(The hearing closed at 07:34 AM, on November 5, 2021.)

C E R T I F I C A T I O N

I have read the foregoing and hereby certify that it is a true and complete transcription of the testimony recorded at the hearing in the case of Olin Waters, held before Administrative Law Judge Evie McCullough.

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