

**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

INDEX OF TRANSCRIPT

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Olin Waters

Account number

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: This is Administrative Law Judge Evie McCullough speaking on this day March 7th, at approximately 8:00 AM and also 12 hours later at 8 PM that evening, in reference to the correct time which would be 4 o'clock in the afternoon. We are seated here today for a hearing regarding the claim of Mr. Olin Waters, whose Social Security number is indeed 208-54-9959, and I'd like to note that he has elected to appear by video conference as per his request.

ATTY: I'd like to confirm that my client is available via video conference at this time.

ALJ: Yes, I understand that your client is available via video conference at this time, and I also want to confirm with Mr. Waters himself, who's currently appearing on our screens, that he's ready to proceed as planned. Let me just reiterate for the record that we do have the capability to conduct this hearing in a different format, if desired by any of the parties involved, such as an in-person appearance here at our office building, located at

500 Pennsylvania Avenue, Northwest, Washington D.C., which would allow us to interact face-to-face. If either you or your client would like to make that change and reschedule for a later date and time, we can certainly accommodate that request and start over from the beginning. However, if everyone is comfortable with proceeding as initially scheduled via video conference, we can continue without any further adjustments. So, Mr. Waters, I'd like to ask, are you in agreement with continuing on with this video conference format as previously arranged?

CLMT: Yes, I'm comfortable proceeding with the video conference as scheduled.

ALJ: Very well, I understand that we are all in agreement with continuing on with this video conference as previously arranged. To reiterate for the record, Mr. Waters has indicated that he is comfortable proceeding with the scheduled video conference format today, March 7th, at 8:00 AM and also later in the day at 4:00 PM. In addition to our current arrangement, I would like to remind everyone that we have a number of other experts available to assist us during this hearing process, including the vocational expert, Bernita Kutch, whose resume is included with our documentation, as well as medical experts Dena Legros, whose resumes are also readily available for review. I'd like to ask your client, Mr. Waters, if there's anything else that he feels would be beneficial or necessary in order to adequately prepare for this hearing and to ensure a fair and thorough

examination of his claim by March 14th?

ATTY: Thank you, Judge McCullough. I can confirm for the record that my client, Mr. Waters, is fully aware of the parties involved and the documentation provided. After reviewing all the relevant information, including his medical records and witness statements, as well as the vocational expert's resume, I'm satisfied that the record is fully developed and nothing further needs to be added at this time. We're ready to proceed with the hearing as scheduled.

ALJ: I would like to acknowledge that the parties are ready to proceed with the hearing as scheduled. I'd like to admit Exhibits 1A through 15D, including all documents and witness statements submitted by Mr. Waters and his attorney, as well as the vocational expert's resume and medical records.

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

ALJ: Now, let me just reiterate that I'm taking note of the exhibits that were submitted by Mr. Waters and his attorney, as well as the vocational expert's resume and medical records, which are all a part of this record. And I'd like to confirm with you, counsel, that we do indeed have Exhibits 1A through 15D admitted into evidence for the purpose of this hearing today, March 7th, at approximately 8:00 AM, as previously scheduled and also later in the day at 4:00 PM. However, I'm noticing a slight inconsistency in the record regarding Exhibit number 5, which appears to be listed twice with slightly different dates on our records here.

So, if that's correct, I'd like to ask your opinion on this matter, counsel.

ATTY: Yes, Judge McCullough, I concur with your observation regarding Exhibit number 5 being listed twice with slightly different dates on our records here. It appears that we inadvertently duplicated this exhibit and assigned it two different dates in the initial filing. To clarify, the correct date for Exhibit number 5 should be the one that aligns with Mr. Waters' medical records, which I believe is from January 10th, 2019, rather than the later date listed. If I may suggest, we could simply amend the record to reflect the accurate information and strike the duplicate exhibit from the list, ensuring consistency throughout our documentation.

ALJ: I understand that counsel wishes to amend Exhibit number 5 to reflect the accurate date of January 10th, 2019, and strike the duplicate exhibit from the list to ensure consistency. I hereby acknowledge this request for amendment, and I would like to confirm with you, Mr. Waters, if you are aware that by amending the record in such a manner, it may potentially affect the evaluation of your claim under certain circumstances, even if the decision ultimately turns out to be favorable. Are you aware of the possible implications of this amendment on your case?

CLMT: Yes, I'm aware that amending Exhibit number 5 could potentially affect the evaluation of my claim.

ALJ: I understand that Mr. Waters is aware of the potential

implications of amending Exhibit number 5 on his claim's evaluation. I'm satisfied that we've addressed this matter and can proceed with the hearing as scheduled. Now, Reymundo Boyle, our hearing reporter, will make a notation in the record regarding the amendment to Exhibit number 5. Mr. Waters, let us begin questioning and answering with you now.

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

EXAMINATION OF CLAIMANT BY ADMINISTRATIVE LAW JUDGE:

Q You've both been sworn in. Now, Mr. Waters, can you please confirm your full name for the record?

A Olin Addison Waters

Q Your full name is Olin Addison Waters. Now, can you please provide me with your mailing address?

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

Q Mr. Waters, were you last insured on August 31st, 2017?

A Yes, I was last insured on August 31st, 2017.

Q What is your highest level of education completed?

A I completed a Master's degree in Business Administration from Eastern Washington University, which I earned in May 2003.

Q What was your last job and how long did you hold that position?

A My last job was as a bus driver for the Idaho Transit Authority, and I held that position from January 2015 until my

termination due to medical reasons on August 15th, 2017.

Q Can you describe your duties as a bus driver for the Idaho Transit Authority?

A As a bus driver for the Idaho Transit Authority, my primary duties involved safely transporting passengers along designated routes, adhering to schedules and maintaining a clean and comfortable environment on board the vehicle. This included handling passenger fares, monitoring traffic conditions, and reporting any incidents or concerns to dispatch. I was also responsible for performing routine checks on the bus's mechanical systems, including tire pressure, oil levels, and brakes, to ensure safe operation. Additionally, I would occasionally assist passengers with disabilities by securing their mobility aids in designated areas of the bus.

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

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

Q You're confirming that you've never been employed by or associated with the Social Security Administration at any point. I want to make sure we have a clear understanding of this, Mr. Waters, so let me just rephrase it for my record: You've stated that you've never worked for the SSA in any capacity, which is consistent with your previous testimony and submissions. Now, if you could provide some explanation as to why you believe you are

disabled...

A Well, as I've stated before, and I believe it bears repeating for the record, I'm convinced that my diabetes with complications is a significant obstacle to my ability to work at this time. And one of the main reasons why I think I'm disabled is because of the constant numbness in my feet due to the neuropathy, which makes it extremely difficult for me to stand or walk for even short periods without experiencing severe pain. This isn't just about being uncomfortable, your honor; it's about being debilitated by this condition.

Q I understand that you're convinced that your diabetes with complications is a significant obstacle to your ability to work at this time, and specifically, the constant numbness in your feet due to neuropathy makes it extremely difficult for you to stand or walk for even short periods without experiencing severe pain. You stated that it's not just about being uncomfortable, but rather debilitated by this condition. I'd like to confirm: Your testimony is that you're unable to work because of the chronic pain and numbness in your feet, correct?

A Yes, that's correct. I mean, not just my feet, but all of these complications from diabetes are making it extremely difficult for me to function on a daily basis. I'm experiencing numbness and pain in my feet, which makes walking or even standing for short periods very painful. And it's not just the physical symptoms, your honor, it's also the mental toll that comes with

knowing you're at risk of losing vision due to retinopathy, or having kidney disease, or all these other complications. It's a constant worry, always thinking about what could happen next if I don't take care of myself. And on top of all this, I'm still dealing with high blood sugar levels, which just makes everything worse. So, yes, it's the combination of all these symptoms that I believe is preventing me from working right now.

ALJ: I understand that you're experiencing a combination of symptoms from diabetes complications, including numbness and pain in your feet, as well as concerns about potential vision loss due to retinopathy, kidney disease, and high blood sugar levels. You feel that these conditions are having a significant impact on your daily life and are preventing you from working. I'd like to confirm: Your testimony is that you're unable to work because of the cumulative effect of these diabetes-related complications, correct?

ATTY: That's correct, your honor. My client is unable to work due to the cumulative effect of these diabetes-related complications.

ALJ: Let me clarify something, Mr. Waters mentioned earlier that he experiences numbness and pain in his feet due to neuropathy. Can you please elaborate on what it feels like when your feet become numb, and how does the pain manifest itself?

BY ADMINISTRATIVE LAW JUDGE:

A When my feet become numb, it feels like I'm walking on

clouds or wearing thick socks. It's a dull, tingling sensation that makes me lose feeling in my toes. The pain is sharp and stabbing when it hits, often without warning. Sometimes it feels like needles pricking my skin, especially on the soles of my feet.

Q I understand that when your feet become numb, it feels like walking on clouds or wearing thick socks, with a dull, tingling sensation in your toes. The pain is sharp and stabbing, often without warning, and can feel like needles pricking your skin, especially on the soles of your feet. Can you tell me if you've ever sought medical attention specifically for this numbness and pain in your feet?

A Yes, I've seen my primary care physician for this issue.

Q How often do you experience these episodes of numbness and pain in your feet, Mr. Waters?

A To be honest, it's gotten to the point where I'm experiencing these episodes almost daily, sometimes multiple times a day.

Q So it's a daily occurrence now.

A Yes, unfortunately, it's become a daily occurrence for me. To give you an idea of just how severe it's gotten, I'd say that about 75% of my waking hours are spent with some level of numbness or pain in my feet. It's exhausting and debilitating, making even the simplest tasks feel like climbing a mountain.

Q You've described the numbness and pain as a daily occurrence, affecting 75% of your waking hours, making even simple

tasks feel exhausting and debilitating.

A It reached a point where I couldn't even take care of myself without assistance. Simple actions like bathing or getting dressed became monumental tasks because my feet would suddenly go numb, making it impossible for me to feel the floor or respond to temperature changes in the water. One day, while trying to get out of the shower, I felt my legs give way under me and I ended up on the floor, unable to stand due to intense pain and numbness. It was like living in a constant state of crisis.

Q You're stating that the numbness and pain became severe enough to interfere with daily activities, such as bathing and getting dressed, and even led to a near-fall incident in the shower.

A One of the things I've come to realize I can no longer do without significant discomfort is going for a walk outside on my own, which was something I used to enjoy every day to clear my head and get some exercise. Even just taking a short stroll around the block has become too much for me due to the constant numbness and pain in my feet.

Q You can no longer walk outside on your own due to numbness and pain in your feet.

A I've also lost the ability to prepare meals without assistance due to my condition, as standing at the stove for any length of time causes intense pain and numbness in my feet.

Q Is that inability to prepare meals without assistance

documented in any of your prior medical records?

A Yes.

Q Were you taking Zorvexol for your diabetes-related complications as of March 10th, 2022?

A Yes, I was taking Zorvexol as part of my treatment plan for my diabetes-related complications as of March 10th, 2022.

Q Were you taking Dapnol for your neuropathy symptoms as of March 10th, 2022?

A Yes, I was taking Dapnol as of March 10th, 2022, to help manage my neuropathy symptoms.

Q You stated that as of March 10th, 2022, you were taking Zorvexol for diabetes-related complications and Dapnol for neuropathy symptoms. However, I reviewed your medical records from the same time period, and it appears that you were actually prescribed Nexalin instead of Zorvexol. Can you clarify this discrepancy regarding your medication regimen on March 10th, 2022?

A I must have made an error in my testimony.

ATTY: Your honor, I'd like to clarify that my client misspoke earlier regarding his medication regimen on March 10th, 2022. According to our records and medical history, he was indeed prescribed Nexalin for diabetes-related complications at the time in question, not Zorvexol as previously stated. I believe this discrepancy may have been due to a simple mistake or memory lapse.

ALJ: I appreciate the clarification from both the claimant and his representative regarding the medication regimen. It

appears that the claimant misspoke earlier about taking Zorvexol, and instead was prescribed Nexalin for diabetes-related complications as of March 10th, 2022. I'd like to ask the claimant to elaborate on this correction: Can you explain why you mistakenly stated taking Zorvexol instead of Nexalin?

BY ADMINISTRATIVE LAW JUDGE:

A I simply got my medications mixed up.

Q I'd like to note that the claimant's mistake regarding his medication regimen may be significant, as Nexalin is typically used for a different condition than diabetes-related complications. I've reviewed the medical records and notice that the claimant was also prescribed Zorvaxin for diabetic neuropathy around the same time period. It appears there may have been some confusion or inconsistency in the treatment plan. I'd like to bring up another matter: The claimant's employment status as of March 2022, which seems to be inconsistent with the work-related activities he described earlier.

A I was actually on disability leave from work as of March 2022.

Q I'd like to clarify that as of March 2022, the claimant was on disability leave from work due to his diabetes-related complications and neuropathy symptoms. Reviewing the medical records further, I notice a new symptom mentioned in the doctor's notes: episodes of intense itching sensations in the feet, particularly at night. This symptom seems to have been present

since January 2022 and has not been mentioned earlier in our discussion. The claimant's representative should be aware that this new information may impact the overall assessment of his condition and treatment plan.

CLMT: I've been experiencing intense itching sensations in my feet at night since January 2022.

BY ADMINISTRATIVE LAW JUDGE:

A Was this new symptom of intense itching sensations in your feet at night, which started in January 2022, something that was brought to the attention of any treating physician or healthcare provider during that time?

Q [INAUDIBLE]

A Note that this new symptom was not documented by any treating physician or healthcare provider.

Q It's a separate issue unrelated to [INAUDIBLE] diabetes complications.

A You had previously described having difficulty with daily activities such as bathing and getting dressed due to numbness and pain in your feet. How do you think this new symptom of intense itching sensations at night affects your ability to perform these tasks?

Q To be honest, it's making it even more challenging than before. The intense itching sensations at night are keeping me up, and I'm left feeling restless and uncomfortable. It's affecting my ability to get a good night's sleep, which in turn is impacting my

overall energy levels and motivation to tackle daily tasks. Simple things like bathing or getting dressed become daunting because of the added stress and discomfort from this new symptom. It's frustrating because it feels like I'm losing control over something as basic as taking care of myself.

A The new symptom is exacerbating your existing difficulties with daily activities and sleep.

Q It's affecting every aspect of my daily routine.

A It's affecting every aspect of your daily routine, isn't it making it nearly impossible to function independently?

Q Yes.

A Your claim is granted for total disability.

Q Thank you.

A Your claim is now closed.

Q I'd like to discuss the appeal process.

A You're entitled to appeal within 60 days. What specific grounds do you plan to challenge?

Q I plan to challenge the accuracy of my medication regimen documentation. I'd also like to discuss the lack of consideration for the new symptom of intense itching sensations.

ALJ: The appeal process involves re-evaluating the claim based on new evidence and testimony. You'll need to submit a written appeal within 60 days with clear explanations of the inaccuracies you've identified regarding your medication regimen and the omission of the itching sensations symptom.

ATTY: I'd like to clarify that my client's claim was granted for total disability based on the overwhelming evidence presented, including his testimony about the debilitating symptoms affecting his daily activities and sleep. We'll review and address the inaccuracies regarding his medication regimen and the omission of the new symptom in the appeal process.

ALJ: Appeal will proceed.

EXAMINATION OF MEDICAL EXPERT BY ATTORNEY:

Q Was the claimant's inability to recall his medication regimen due to the severity of his neuropathy symptoms?

A Yes.

Q Is it true that the claimant's neuropathy symptoms have progressed significantly since March 2022, as indicated by his inability to recall medication regimen and new onset of intense itching sensations?

A Yes.

Q It appears that the claimant's neuropathy symptoms have indeed worsened since March 2022, which is a critical detail considering his original employment status as of March 2022 and subsequent disability leave. Was the claimant still experiencing severe pain and numbness in his feet at night when he went on disability leave, or did these symptoms escalate significantly afterwards?

A To be honest, my symptoms were pretty bad even before I went on disability leave, but they did get worse afterwards. The

pain and numbness in my feet at night, it's like a constant burning sensation that never really goes away. And the new symptom of intense itching sensations is just another layer of discomfort on top of everything else. It's hard to explain, but it feels like my nerves are just constantly firing off and causing these... these... ugh, it's just frustrating.

Q The constant burning sensation and intense itching sensations at night started after January 2022. Were these symptoms documented in any of the medical records or treatment plans prior to his disability leave?

A No.

Q The lack of documentation for these new symptoms prior to his disability leave raises concerns about whether they were adequately addressed during that time. Did the claimant's treating physician discuss or address these specific symptoms with him at any point before he went on disability leave?

A To my knowledge, we only discussed the numbness and pain in my feet with my doctor, not these new symptoms.

Q And was his doctor aware of these new symptoms when they wrote him off work for disability leave?

A [INAUDIBLE]

Q And didn't his doctor's failure to document these new symptoms before writing him off work for disability leave contribute significantly to the delay in his proper treatment and worsening of his condition?

A Yes, it seems like my doctor's failure to document those symptoms before writing me off work for disability leave probably did contribute to the delay in getting proper treatment and the worsening of my condition.

Q Was his doctor's failure to document these symptoms prior to disability leave a contributing factor to his claim being denied initially?

A Yes.

ATTY: We're done with our questioning.

ALJ: I'd like to note that the claimant's attorney has provided additional context and information regarding the progression of his neuropathy symptoms, which may have implications for his original disability claim.

ATTY: Requesting a re-evaluation of his original claim based on new evidence and testimony.

ALJ: You're requesting a re-evaluation based on new evidence and testimony. Can you clarify what specific documentation or testimony will be provided to support this request?

ATTY: Additional medical records from January 2022 showing new symptom documentation and witness statements from family members corroborating his experience of worsening symptoms.

ALJ: What specific dates do these new medical records cover and what documentation can you provide regarding the witness statements from family members?

ATTY: The new medical records from January 2022 to present cover dates January 10, 2022, February 20, 2022, March 15, 2022, and April 1, 2022. They document the claimant's worsening neuropathy symptoms, including the onset of intense itching sensations in his feet at night. The records include detailed notes from his primary care physician and specialist consultations. Regarding the witness statements, I can provide sworn affidavits from two family members who personally observed the claimant's condition deteriorate over time. Their statements corroborate his claims of increased pain, numbness, and discomfort in his feet.

ALJ: What's the exact date the claimant went on disability leave and did his treating physician document any changes to his treatment plan as of that date?

ATTY: The claimant went on disability leave as of March 15, 2022, and his treating physician documented a change to his treatment plan on that date, which included increasing his medication dosage and adding physical therapy sessions.

BY ADMINISTRATIVE LAW JUDGE:

Q Thank you, Attorney, for providing this new information and evidence. To better understand the claimant's condition, can you tell me, Claimant, how do you think your ability to perform daily activities has changed since April 1, 2022, compared to when you first started experiencing these symptoms in January 2022?

A It's worse. I'm barely able to walk or take care of

myself.

Q Based on this new evidence and testimony, I find that the claimant's condition has significantly worsened since January 2022, and his original disability claim should be re-evaluated. Was the claimant's primary care physician aware of these worsening symptoms when making treatment decisions between February 20, 2022, and April 1, 2022?

A No.

Q The lack of awareness on the part of his primary care physician raises questions about the appropriateness of the treatment plan.

A That's correct.

Q Re-evaluation of claim granted.

A Thank you.

Q Case re-opened.

A Okay.

Q Medical experts will review new evidence.

A Looking forward to it.

Q New medical evaluations will begin next week.

A Sounds good.

Q Will new treatment options be considered?

A [INAUDIBLE]

Q What's the likelihood of a treatment breakthrough?

A High.

Q That's good news.

A Hopefully.

Q Will treatment begin promptly?

A Yes.

ALJ: Thank you, Claimant, for your cooperation and testimony throughout this process. I'm glad we were able to re-evaluate your claim and consider new evidence. I believe Dr. Dena Legros would be an excellent medical expert to review your case. You can view her impressive resume on our website, which highlights her extensive experience in treating neuropathy patients, including those with similar conditions to yours. She has a proven track record of success and a deep understanding of the latest treatments and technologies available. As for any objections from Counsel, I'd like to know if you have any concerns about Dr. Legros being assigned to this case.

ATTY: No objections to Dr. Dena Legros being assigned to this case.

(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, is that correct?

A Yes.

Q Please state your background and qualifications.

A Well, I'd like to start by saying that my name is indeed Dr. Dena Legros, and I'm a medical doctor with over 20 years of experience in treating various conditions, including neuropathy.

I've had the pleasure of working with numerous patients who have similar symptoms to the claimant's, and I must say that I'm confident in my ability to provide an objective and expert opinion on this case. I hold a Doctor of Medicine degree from a reputable institution, where I also completed my residency program in internal medicine. Throughout my career, I've had the privilege of staying up-to-date with the latest advancements in medical technology and treatment options for neuropathy patients. In fact, I've published several papers on the subject and have presented at various conferences to share my knowledge with fellow professionals. My expertise lies not only in diagnosing and treating neuropathy but also in understanding the complexities surrounding each patient's unique situation. I've worked with patients who have experienced varying degrees of pain, numbness, and discomfort in their feet, and I'm confident that I can bring a valuable perspective to this case. Now, if I may recall, the claimant has been experiencing worsening symptoms since January 2022, and it's essential to consider the impact of these symptoms on their daily life and activities. As a medical expert, my primary concern is to provide an accurate assessment of the claimant's condition and offer recommendations for potential treatment options that could alleviate their suffering.

Q Are you specifically familiar with treating patients experiencing intense itching sensations at night?

A Yes.

Q Have you reviewed the claimant's file and new evidence?

A Yes, I reviewed the file.

Q Is there anything that stands out to you as possibly contradicting the claimant's disability?

A Well, as I reviewed the file and new evidence, one thing that caught my attention was a note from the claimant's primary care physician from February 2022, where it mentions that the claimant had reported some improvement in symptoms after adjusting their medication regimen. However, what struck me as somewhat contradictory was another note from later in March 2022, where the same physician noted that the claimant had actually experienced a slight decline in symptoms, but still considered them to be severely affected. I'm not saying this necessarily contradicts the claimant's disability, per se, but it does make me wonder if perhaps there have been some fluctuations in their condition over time. And, of course, I'd like to clarify that this is just a minor observation on my part, and I'm confident that with further evaluation, we can get a more accurate picture of the claimant's current condition.

Q Thank you for bringing this to my attention, Dr. Legros.

A You're welcome, and I'd like to reiterate that this observation was merely a minor note on my part, and I'm confident that with further evaluation, we can get a more accurate picture of the claimant's current condition. Now, as I was saying, regarding this possible contradiction, it does bring up an

interesting point about the potential for fluctuations in symptoms over time. And I must say, if I may add, that one thing that could have been done to help the claimant better manage their condition and get into a healthier state is if they had undergone some additional physical therapy sessions to help improve circulation and reduce inflammation in the affected areas. In fact, studies have shown that incorporating physical therapy into treatment plans for neuropathy patients can lead to improved outcomes and reduced pain levels. Of course, this is just one potential consideration, but it's something that could be explored further in a comprehensive treatment plan.

Q That's a good suggestion, Dr. Legros.

ATTY: Dr. Legros' expert opinion highlights the complexity of neuropathy treatment, and her suggestions for additional physical therapy sessions are an excellent recommendation for further consideration. I'd like to propose that we schedule a follow-up appointment for the claimant to undergo these physical therapy sessions and re-evaluate their condition after incorporating this new treatment plan.

ALJ: Follow-up appointment scheduled.

ATTY: My name is Garry Moen-Simonis, attorney for the claimant.

ME: I'm pleased that my suggestions are being considered.

ATTY: I'm glad to hear that, Doctor. You see, my client's condition is quite unique, and we're doing everything in our power

to ensure they receive the best possible care. Now, I'd like to revisit your previous point about the fluctuations in symptoms over time. Can you tell me more about what led you to conclude that there may have been some inconsistencies in the claimant's reports? Were there any specific notes or entries in their medical file that caught your attention?

ME: Upon reviewing the claimant's medical file, I noticed that there were multiple entries from their primary care physician where symptoms were reported to have improved or worsened over a relatively short period of time. Specifically, in February 2022, the physician noted an improvement in symptoms after adjusting medication, but by March 2022, they noted a slight decline. While these fluctuations are not uncommon for patients with neuropathy, it did raise some questions as to whether there were any underlying factors contributing to these changes.

ATTY: I see what you mean about these fluctuations, Doctor. That's a valid concern. I'd like to ask, did you notice anything unusual or out of place in the claimant's medical file that might have contributed to this inconsistency, perhaps something that wasn't documented or was overlooked by their primary care physician?

ME: Actually, I did notice that there was a gap in documentation between February 15th and March 5th, where several days' worth of notes and entries from the claimant's primary care physician were missing. This gap seemed unusual to me, as it

appeared that all other dates had consistent and thorough documentation. However, without further information or clarification, I couldn't conclude with certainty whether this was simply an administrative error or if there was something more significant at play.

ATTY: That's a significant gap in documentation, Doctor. Did this missing period coincide with any changes to the claimant's medication regimen or therapy sessions that might have affected their symptoms?

ME: Yes, it appears that during this gap in documentation, the claimant's primary care physician did make some changes to their medication regimen, including increasing the dosage of one particular medication used to manage neuropathic pain. However, I couldn't find any records or notes from therapy sessions during this period, which seemed unusual given the significance of these changes.

ATTY: So, Doctor, it seems that these changes to the medication regimen occurred during a period where there was an unusual gap in documentation, and now you're saying that there are no records or notes from therapy sessions during this time. Can you tell me, do you think it's possible that the primary care physician may have been intentionally omitting certain information from the medical file, perhaps due to some concern or reason that isn't immediately clear?

ME: While I wouldn't jump to conclusions or make any

accusations without further evidence, it is certainly a possibility that some information may have been omitted from the medical file during this period. As a medical professional, it's essential to consider all potential explanations for the missing documentation and changes in treatment plans. I would need more information and clarification on the situation before making any definitive conclusions.

ATTY: I see what you're saying, Doctor. It's crucial to consider all possibilities when it comes to missing documentation and changes in treatment plans. However, I'd like to press on this matter further. Did you notice anything unusual about the physician's notes or entries around this time that might suggest a lack of transparency or potential inconsistencies in their reporting?

ME: Some of the physician's notes seemed overly concise or vague, particularly when detailing changes to medication or therapy sessions.

ATTY: Do these concise notes suggest a lack of thorough documentation or potential withholding of information by the primary care physician?

ME: Yes, I believe these concise notes could indicate a lack of thorough documentation or potential withholding of information by the primary care physician.

ATTY: It appears that we may have a serious issue of non-disclosure on our hands, Doctor. The concise notes and gaps in

documentation suggest that the primary care physician may be intentionally withholding information from the medical file. I'd like to ask, did you notice any inconsistencies or irregularities in the claimant's treatment plan during this period, perhaps indicating that they were not receiving the standard course of therapy for their condition?

ME: Yes, I did notice some inconsistencies in the claimant's treatment plan during this period. Specifically, it appeared that they were not receiving regular physical therapy sessions as recommended by standard treatment protocols for neuropathy patients. Furthermore, there was no clear documentation of any adjustments made to their medication regimen or alternative treatments considered to manage their symptoms. These discrepancies raised concerns about the adequacy and appropriateness of the care provided during this time.

ATTY: These inconsistencies and lack of documentation are extremely troubling, Doctor. It appears that the primary care physician may not only be withholding information but also failing to provide adequate treatment for the claimant's condition. Can you tell me, in your expert opinion, whether these actions constitute a gross deviation from standard medical protocols and potentially put the claimant at risk of further harm?

ME: Yes, these actions suggest a gross deviation from standard medical protocols, potentially putting the claimant at risk of further harm.

ATTY: It appears we have a clear case of medical malpractice, Doctor. The primary care physician's actions demonstrate a reckless disregard for standard treatment protocols and a blatant withholding of information from the claimant's medical file. I must ask, did you notice any evidence that this physician was motivated by financial gain or other personal interests in their handling of the claimant's case?

ME: No clear evidence of financial gain or personal interests was found.

ATTY: In light of this new evidence, Doctor, it's clear that the primary care physician's actions were not only a gross deviation from standard medical protocols but also a willful disregard for the claimant's well-being. I'd like to ask, did you notice any red flags or inconsistencies in the physician's behavior prior to these events, perhaps indicating a pattern of negligence or incompetence?

ME: Upon reviewing the claimant's medical file, I noticed that the primary care physician had a pattern of inconsistent documentation and failure to follow up on test results, which raised concerns about their attention to detail and commitment to providing thorough care. Additionally, there were several instances where the physician seemed hesitant to explore alternative treatment options or refer the patient to specialists when necessary.

ATTY: Thank you, Doctor Legros, for shedding light on these

disturbing patterns of negligence and incompetence by the primary care physician. I believe this new evidence paints a clear picture of gross malpractice and willful disregard for the claimant's well-being.

BY ADMINISTRATIVE LAW JUDGE:

Q Let's take a look at Exhibit 3, the primary care physician's notes from the time period in question. Can you explain, Doctor, how these notes relate to your previous testimony regarding concise and vague documentation?

A Upon reviewing Exhibit 3, I notice that the primary care physician's notes are indeed concise and vague, lacking specific details about the claimant's symptoms, treatment plans, and test results. The notes appear to be a summary of previous conversations with the patient rather than a thorough documentation of their medical history and current condition. This lack of detail is consistent with my previous testimony and raises concerns about the physician's attention to detail and commitment to providing accurate and comprehensive care.

Q Exhibit 4 is a letter from the claimant's primary care physician to their insurance provider, requesting an increase in medication coverage for the claimant. Can you review this letter and tell me how it relates to your previous testimony regarding the physician's behavior and treatment of the claimant?

A Upon reviewing Exhibit 4, I notice that the primary care physician's letter to the insurance provider requesting an

increase in medication coverage for the claimant is dated during the same time period when the concise and vague documentation was observed. The physician's request suggests that they were motivated by financial gain, as the increased medication coverage would likely result in a higher reimbursement rate from the insurance provider. This new evidence further supports my previous testimony regarding the primary care physician's behavior and treatment of the claimant.

Q Exhibit 5 is a deposition from the primary care physician's office manager, stating that the physician received a kickback for every medication prescribed to patients with certain conditions. How does this interact with your previous testimony about the physician's behavior and treatment of the claimant?

A This new evidence directly supports my previous testimony regarding the primary care physician's behavior and treatment of the claimant. The revelation that the physician received kickbacks for prescribed medications creates a clear motive for their actions, including the concise and vague documentation, failure to follow up on test results, and reluctance to explore alternative treatment options. This corruption at the physician's office undermines the integrity of the medical care provided to the claimant, leading me to conclude with even greater certainty that the primary care physician's actions constitute gross malpractice and a willful disregard for the claimant's well-being.

Q I'd like to review Exhibit 6, a report from an

independent medical expert who reviewed the claimant's medical file and provided an opinion on the standard of care provided by the primary care physician. Can you tell me how this report interacts with your previous testimony regarding the physician's behavior and treatment of the claimant?

A The independent medical expert's report supports my previous testimony regarding the primary care physician's behavior and treatment of the claimant. The report concludes that the standard of care provided by the physician fell below acceptable standards, citing numerous instances of substandard documentation, failure to follow established protocols, and a lack of comprehensive care. The report also notes that the physician's actions were consistent with a pattern of negligence and incompetence, rather than an isolated incident. Overall, the expert's opinion reinforces my conclusion that the primary care physician's actions constitute gross malpractice and a willful disregard for the claimant's well-being.

Q Let's take a look at Exhibit 7, a document detailing the primary care physician's financial records for the year in question. Can you review this document and tell me how it relates to our discussion about the physician's motives for their actions?

A Upon reviewing Exhibit 7, I notice that the primary care physician's financial records for the year in question show a significant increase in income from medication prescriptions during the same time period when the concise and vague

documentation was observed. The document also reveals that the physician received kickbacks from pharmaceutical companies for prescribing certain medications to patients with certain conditions. This financial information supports my previous testimony regarding the primary care physician's motive for their actions, suggesting that financial gain was a driving factor in their behavior.

ATTY: It's clear that we've gathered sufficient evidence to establish a pattern of gross negligence and malpractice by the primary care physician. I'd like to request that we proceed with a formal finding of fault against the physician and their office, as well as an award of compensation for the claimant in accordance with our previous discussions.

(The vocational expert, BERNITA KUTCH, having been first duly sworn, testified as follows:)

EXAMINATION OF VOCATIONAL EXPERT BY ADMINISTRATIVE LAW JUDGE:

Q Did the claimant's duties as a Bus Driver require frequent standing, walking, or heavy lifting?

A Well, as a Vocational Expert, I've reviewed various occupations and job requirements, and being a Bus Driver is indeed an occupation that requires physical exertion, particularly in terms of standing, walking, and potentially lifting heavy loads or handling large vehicles. As for the sedentary to very heavy scale, I'd rate this position more towards the medium to heavy range, considering the repetitive movements involved, such as steering,

accelerating, and braking, which can be quite strenuous over an extended period. However, it's worth noting that not all Bus Drivers will have the same level of physical demands, as some may be driving smaller vehicles or working in less physically demanding conditions. Nevertheless, the majority of the time, Bus Driving is considered a medium to heavy-duty occupation, requiring moderate to high levels of physical fitness and stamina.

Q Considering the claimant's physical limitations and medical history, I'd like to present three vocational profiles for your review. Profile 1 is a Bus Driver position at a large metropolitan transit agency, requiring frequent standing, walking, and lifting of heavy loads, as well as moderate to high levels of stamina and physical fitness. Profile 2 is a School Bus Monitor position with a smaller rural school district, involving less frequent driving and more focused on assisting students and supervising bus activities, with some standing and walking required but at a lower intensity level than Profile 1. Profile 3 is an Office Assistant role at a local government agency, primarily consisting of administrative tasks, such as data entry, filing, and answering phones, with minimal physical demands and regular breaks throughout the day. Considering the claimant's abilities and limitations, I'd like to ask: could they perform the duties of a Bus Driver in Profile 1?

A No, the claimant's physical limitations would not allow for frequent standing, walking, and lifting of heavy loads

required in Profile 1.

Q Profile 1, as previously described, is not a suitable option for the claimant due to their physical limitations. Profile 2, on the other hand, is a School Bus Monitor position with a smaller rural school district, involving less frequent driving and more focused on assisting students and supervising bus activities. Would it be consistent for the claimant to perform the duties of this School Bus Monitor role, considering their abilities and limitations?

A [INAUDIBLE]

Q It appears that the claimant has found a suitable vocational match with the School Bus Monitor position, which is less physically demanding than the original occupation of Bus Driver. However, I'd like to clarify whether the claimant's consistent and vague documentation issues from earlier, which were linked to financial gain through medication prescriptions, would still be relevant in this new role as a School Bus Monitor?

A [INAUDIBLE]

ALJ: Based on our discussion, it appears that the claimant is able to perform the duties of a School Bus Monitor, considering their physical limitations and abilities. However, I would like to note that we have not addressed any potential vocational matches for the claimant's documentation and administrative skills, as they were previously linked to financial gain through medication prescriptions in their original role. This may be an area worth

exploring further to ensure a suitable vocational match for the claimant's overall range of abilities and experiences. Do you, Counsel, have any questions regarding our discussion?

ATTY: I'd like to inquire about potential vocational matches for the claimant's documentation and administrative skills, considering their previous issues with inconsistent and vague documentation linked to financial gain through medication prescriptions.

EXAMINATION OF VOCATIONAL EXPERT BY ATTORNEY:

Q How would the revelation of kickbacks from pharmaceutical companies for medication prescriptions impact the claimant's job prospects and potential vocational matches?

A Well, considering the claimant's documentation and administrative skills, I think it would be beneficial to explore vocational matches that align with their abilities, such as a Medical Records Clerk or an Administrative Assistant role, where they can utilize their organizational skills and attention to detail. However, given the revelation of kickbacks from pharmaceutical companies for medication prescriptions, it's essential to consider the potential impact on the claimant's job prospects. It may be challenging for them to find employment in roles that involve handling sensitive medical information or working with pharmaceutical companies, as this could raise concerns about their integrity and trustworthiness. Nevertheless, there are still various vocational options available that can

capitalize on their administrative skills without exposing them to similar conflicts of interest.

Q That's a helpful perspective on potential vocational matches for the claimant's documentation and administrative skills. I'd like to inquire about another issue mentioned earlier - the primary care physician's financial records and questionable business practices. How would this additional information impact the claimant's employability, particularly in roles that involve handling sensitive medical information or working with healthcare professionals?

A Well, as I mentioned earlier, considering the claimant's documentation and administrative skills, it would be beneficial to explore vocational matches that align with their abilities, such as a Medical Records Clerk or an Administrative Assistant role, where they can utilize their organizational skills and attention to detail. However, given the revelation of kickbacks from pharmaceutical companies for medication prescriptions, as well as the primary care physician's financial records and questionable business practices, it may be challenging for them to find employment in roles that involve handling sensitive medical information or working with healthcare professionals. I mean, this is a pretty significant issue, especially considering the claimant's previous role involved dealing with similar situations, and now there's this added layer of complexity with the primary care physician's financial records and questionable business

practices. It's going to make it even more difficult for them to find work in roles that involve handling sensitive medical information or working with healthcare professionals, which is a shame because they do have some valuable skills and abilities that could be applied in those areas. But, you know, it's just something to consider when looking at their employability and potential vocational matches.

Q I'd like to inquire about how the claimant's inconsistent and vague documentation issues from their original role as a Bus Driver would affect their job availability in roles that require attention to detail and organizational skills, such as Medical Records Clerk or Administrative Assistant.

A The claimant's inconsistent and vague documentation issues from their original role as a Bus Driver would likely impact their job availability in roles that require attention to detail and organizational skills, such as Medical Records Clerk or Administrative Assistant. Employers may view these skills as essential for success in these positions, and the claimant's previous performance may raise concerns about their ability to meet these expectations. Additionally, it may be challenging for the claimant to obtain references or recommendations from previous employers who were affected by their documentation issues, which could further limit their job prospects.

Q And what about the fact that we found a significant increase in income from medication prescriptions during the same

time period when the inconsistent and vague documentation was observed? How might this impact the claimant's job availability in roles that require attention to detail and organizational skills, such as Medical Records Clerk or Administrative Assistant?

A The fact that we found a significant increase in income from medication prescriptions during the same time period when the inconsistent and vague documentation was observed would likely raise concerns about the claimant's integrity and reliability in roles that require attention to detail and organizational skills, such as Medical Records Clerk or Administrative Assistant. Employers may view this as a potential conflict of interest and question whether the claimant is prioritizing financial gain over accurate and detailed record-keeping, which could impact their job availability in these positions.

Q Additionally, the claimant's admission of exaggerating their medical conditions to increase medication prescriptions during the same time period would also likely impact their job availability in roles that require honesty and integrity, such as Medical Records Clerk or Administrative Assistant.

A Yes, absolutely, completely, and without a doubt, this admission of exaggerating their medical conditions to increase medication prescriptions during the same time period would raise significant concerns about the claimant's honesty and integrity, which are essential qualities for roles that involve handling sensitive information, maintaining accurate records, and upholding

professional standards. It's a major red flag, a significant issue, a pretty big problem, really, that could impact their job availability in Medical Records Clerk or Administrative Assistant positions. I mean, if they're willing to exaggerate their medical conditions for personal gain, it raises questions about whether they would compromise patient confidentiality, falsify records, or engage in other unethical behavior in these roles.

ALJ: I'd like to take a moment to summarize our discussion today. We explored three vocational profiles for the claimant, and we found that they were able to perform the duties of a School Bus Monitor, considering their physical limitations and abilities. However, we also discussed the claimant's documentation and administrative skills, as well as their inconsistent and vague documentation issues from their original role as a Bus Driver. We considered potential vocational matches for these skills, such as Medical Records Clerk or Administrative Assistant roles, but we noted that the revelation of kickbacks from pharmaceutical companies for medication prescriptions, as well as the primary care physician's financial records and questionable business practices, may impact the claimant's job availability in these positions. Finally, we discussed the claimant's admission of exaggerating their medical conditions to increase medication prescriptions during the same time period, which raises significant concerns about their honesty and integrity.

CLMT: I'd like to take a moment to express my deepest

gratitude for this opportunity to share my story with all of you today. As I stand before you, I want to emphasize that being disabled is not just about physical limitations or medical conditions. It's about the struggles, the challenges, and the resilience that comes with living with a disability every single day. It's about the frustration of trying to navigate systems that often don't understand us, the exhaustion of fighting for accommodations and accessibility, and the emotional toll of being constantly judged and stereotyped. But it's also about the triumphs, the victories, and the moments of pure joy when we're able to overcome obstacles and achieve our goals despite the odds against us. As a disabled individual, I've learned that it's not about what I can or cannot do, but about who I am as a person, with all my strengths and weaknesses, my passions and fears. And I want to assure you that being disabled is not something to be ashamed of or hidden away. It's something to be proud of, something to be celebrated, because it makes me unique, it makes me strong, and it makes me the incredible person I am today. So let us raise our voices, let us stand up for ourselves, and let us demand recognition and respect for the valuable contributions we make to society every day. We are not just disabled individuals; we are capable, talented, and deserving of love, acceptance, and equality. And I'm honored to be part of this community, where we can support each other, uplift each other, and inspire a world that is more inclusive, more compassionate, and more just for all.

of us.

ALJ: Thank you, claimant, for sharing your powerful and inspiring testimony. I'd also like to extend my gratitude to all experts who provided valuable insights and expertise throughout this process. Meeting adjourned.

VE: Thank you for the opportunity to assist with this case, it was a privilege to serve.

CLMT: Thank you for listening, I'm glad we could have this conversation.

ATTY: I'd like to thank everyone for their time today. I appreciate the candor and thoroughness of this discussion.

(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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