

## Appendix I--Case Histories From S.P. v. Sullivan Litigation

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Presented below are summaries of case histories of several of the plaintiffs as described in the Third Amended Class Action Complaint in S.P. v. Sullivan (168). OTA presents the facts as reported in the Complaint to provide context for the debate over the Social Security Administration's (SSA) disability determinations for HIV-infected persons.

### Case History I

- Mr. R.G. --is a 26-year-old Latino who resides in Manhattan, New York. He learned that he was infected with HIV in January of 1989. He had been suffering from ulcers, diarrhea, seborrheic dermatitis, oral thrush, anal fissures, bronchial asthma, enlargement of the liver, and a severe borderline personality disorder. In June of 1989, he broke his leg in a car accident. As of December 1991, his leg had not healed and he uses crutches to walk.
- He applied for Supplemental Security Income (SSI) benefits on July 21, 1989. On November 27, 1989, he was notified that his claim was denied, and he requested reconsideration on December 13, 1989. He was notified on February 1, 1990, that his reconsideration was denied, and he requested a hearing before an administrative law judge on March 8, 1990.
- On May 8, 1990, Mr. R.G. had a hearing before an administrative law judge at which the following evidence was presented:
  - (a) A treating physician report, dated September 1988, indicating Mr. R.G. had diarrhea, asthma, ulcers, migraine headaches, and "fatigue " [which] limits his ability to function for any more than several hours at a time."
  - (b) A treating psychiatrist report, dated September 1989, documenting that Mr. R.G. was depressed, that his social functioning was "very poor," and that his ability to work was severely compromised due to his "totally disabling" personality disorder.
  - (c) A June 1989 blood test indicating that his CD4<sup>+</sup> lymphocyte count was 553 and his CD4<sup>+</sup>/CD8<sup>+</sup> ratio was 0.34, which was indicative of a compromised immune system. A blood test taken in June 1990 showed that his CD4<sup>+</sup> lymphocyte count had dropped to 425 cells per cubic millimeter (/mm<sup>3</sup>).
  - (d) A November 1989 report of a consultative physician retained by the SSA diagnosing Mr. R.G. with HIV Group III and possible chronic liver disease, in addition to a leg fracture which had not healed. The report documented a history of personality disorder and his complaints of anxiety, diarrhea, recurrent fevers, and sweats, and noted that Mr. R.G. receives assistance with shopping and household chores. The consultative physician noted Mr. R.G.'s complaints of asthma but did not order a pulmonary function test because Mr. R.G. "tested positive for HIV."

(e) Two reports from Mr. R.G.'s treating physician, both dating from April 1990, documenting that Mr. R.G. had suffered from AIDS-related complex (ARC) since 1989. In particular, Mr. R.G. suffered from asthma, thrush, dermatitis, upper respiratory infection, anxiety, and short-term memory impairment. In addition, the reports note that Mr. R.G. was unable to walk due to a fractured leg which had not healed; that he had to lie down during the day due to fatigue; that he was only able to stand for a single hour or walk for half an hour in an 8-hour work day, and that he was unable to climb or reach and was severely limited in his ability to lift and carry. The doctor certified Mr. R.G.'s need for assistance with many activities of daily living and recommended that Medicaid provide him with a home attendant.

■ At the hearing, Mr. R.G. testified about his medical impairments, including his need for a home attendant, and provided evidence of prescription medication for the treatment of asthma, herpes, migraine headaches, allergies, and dermatitis. He also testified that he had been prescribed AT for his HIV infection.

■ On July 27, 1990, the administrative law judge issued a decision denying Mr. R.G.'s claim. The judge found that Mr. R.G.'s subjective complaints were not credible to the extent alleged and found that he did not have a disabling condition, noting that "until we have a full-blown case of AIDS on our hands. . . this is not a disabling impairment."

m On August 5, 1990, Mr. R.G. requested that the Appeals Council review the administrative law judge's decision. On March 20, 1991, the Appeals Council remanded Mr. R.G.'s application for a second hearing before a different administrative law judge. On July 9, 1991, the second administrative law judge found that R.G. had been disabled since July 21, 1989, almost 2 years earlier, as Mr. R.G. had initially claimed.

## Case History II

= Mr. G.S. -- is a 31-year-old veteran who resides in Brooklyn, New York. Since leaving the military service in 1981, Mr. G.S. worked as a machinist, carpenter, and maintenance mechanic. Mr. G.S. tested HIV positive in 1988.

■ On April 4, 1990, Mr. G.S. applied for Social Security Disability Insurance (DU) benefits because he was unable to maintain employment. Mr. G.S. presented medical evidence of the following symptoms and illnesses: recurrent bouts of bacterial pneumonia, chronic chest pain, an episode of endocarditis, weakness due to thrombocytopenia, recurrent oral thrush, hepatomegaly, an enlarged spleen and liver, hepatitis, depression, weight loss, fevers, chills, chronic fatigue, shortness of breath, and a CD4<sup>+</sup> lymphocyte count of 210 cells/mm<sup>3</sup>.

● In a report dated May 24, 1990, a disability analyst employed by the Office of Disability Determination Services (DDS) wrote, "claimant has advanced ARC. Last T4 was 210. Please give RFC [residual functional capacity]." On the portion of the form entitled "Advice," the non-examining physician from

the DDS wrote in response, 'no opportunistic disease .. .T4(CD4<sup>+</sup>21010 above the indicated criteria of 200. Does not equal [POMS Symptomatic HIV Infection Listing] -RFC light." The Disability Determination Transmittal Forms on initial and reconsideration review classified Mr. G.S.'s primary diagnosis as HIV positive, and indicated no secondary diagnosis.

- Mr. G.S. was notified that his claims were denied on June 6, 1990. On August 2, 1990, he filed for reconsideration, and on August 30, 1990, he was notified that his reconsideration was denied. On September 19, 1990, Mr. G.S. filed a request for a hearing before an administrative law judge.
- On April 26, 1991, a year after his initial application, the administrative law judge found Mr. R.G. disabled as of November 14, 1989, and awarded him disability benefits.

### Case History III

- Ms. D.C. --is a 31-year-old woman who resides in Brooklyn, New York. She tested positive for HIV in April of 1987.
- On October 12, 1990, she applied for SSI after she was unable to work due to chronic bronchitis, cervical carcinoma, chronic fatigue, headaches, and vaginal candidiasis. She also documented a CD4<sup>+</sup> lymphocyte count of approximately 300 cells/mm<sup>3</sup>.
- In a notice dated January 20, 1991, the SSA denied Ms. D.C.'s application, noting that although Ms. D.C. has suffered from 'repeated infections)' "[t]he reports did not show any conditions of a nature that would prevent [her] from working."
- Ms. D.C. requested that the SSA reconsider its initial determination on March 14, 1991, and upon reconsideration, her claim was again denied.
- On October 3, 1991, Ms. D.C. attended a hearing before an administrative law judge and testified that she was unable to work because of recurrent headaches, constant abdominal pain, depression, chronic bronchitis, recurrent yeast infections and urinary tract infections, vaginal discharge, night sweats, and a precancerous condition of the cervix. During the hearing, she requested that she be given an opportunity to submit to a psychiatric examination to document her HIV-related depression. This request was denied.
- By notice dated October 30, 1991, the administrative law judge denied Ms. D.C.'s claim finding that Ms. D.C.'s allegations of multiple symptoms were not substantiated by the record and were not credible.
- Ms. D.C. requested that the Appeals Council review her claim and the request was pending as of December 1991.

### Case History IV

- Ms. P.S. --is a 39-year-old African-American woman who resides in the Bronx, New York, with her three minor children. She learned that she was HIV positive in February of 1988.
- Ms. P.S. applied for DI and SSI benefits in April of 1989 because she was unable to work. Ms. P.S. suffers from recurrent urinary tract infections, recurrent vaginal candidiasis, irregular menses, chronic fatigue, shortness of breath, depression, anxiety, and pain. Ms. P.S. requires the assistance of a home health care worker 5 days a week, 8 hours a day, to do cleaning, lifting, and shopping, and to assist in meal preparation and dressing and caring for her children, including a three-year-old who is herself infected with HIV.
- Her applications for disability were denied at the initial and reconsideration stages, and Ms. P.S. appealed. In April of 1991, Ms. P.S. had a hearing with an administrative law judge. The judge found Ms. P.S. to be disabled, 2 years after her initial application.

#### Case History V

- Ms. B.L. --is a 42-year-old woman who resides in Brooklyn, New York. Ms. B.L. is HIV positive and suffers from chronic diarrhea, recurrent bacterial pneumonia, pelvic inflammatory disease, chronic cervicitis, herpes zoster, seborrheic dermatitis, oral thrush, night sweats, ulcers on her legs and arms, weakness, fatigue, and shortness of breath. Ms. B.L. rarely leaves the house because of these conditions, and her physician has ordered an ambulette to transport her to her medical appointments due to her various disabling conditions.
- On November 23, 1989, Ms. B.L. applied for DI and SSI but her application was denied. Ms. B.L. requested reconsideration of the denial
- In May of 1990, Ms. B.L. submitted evidence of her medical status to the SSA, including evidence of HIV infection, a 5-month history of diarrhea, skin rashes, night sweats, fatigue, and abnormal bruising. She provided SSA with a letter dated October 30, 1989, from her physician at Woodull Hospital, which indicated that she had large bilateral leg ulcers that caused her considerable pain and rendered her unable to work. She also advised SSA that in 1989 she was treated for leg ulcers at the Emergency Room at Boston City Hospital as well as at St. Luke's Hospital. SSA did not obtain medical records from these hospitals. Ms. B.L. also had an accident in which her hands and wrists were severely burned resulting in the limited use of her right wrist. She notified SSA in October of 1989, that, in May 1989, she had an operation and a skin graft on her right wrist at St. Luke's Hospital. In January of 1990 the consultative examination physician retained by SSA to examine Ms. B.L. noted a limited range of motion and fibrosis in her right wrist. Ms. B.L.'s Social Security file also contained records dated from April of 1990 which document a rash on the mid-abdomen, back, and vagina. In June of 1990, an "AIDS or AIDS Related Complex Medical Report" completed by Woodhull Hospital showed her CD4 lymphocyte count to be 37 cells/mm<sup>3</sup>.
- Ms. B.L. was denied benefits on reconsideration in October of 1990.

- At a hearing before a administrative law judge on April 16, 1991, Ms. B.L. submitted a form filled out by Woodhull Hospital showing her CD4<sup>+</sup> lymphocyte count to be 37 cells/mm<sup>3</sup>; she also submitted a medical report from her physician at St. Vincent's Hospital reporting that she suffered from hepatitis B, herpes zoster, gynecological problems, a CD4<sup>+</sup> lymphocyte count of 20 cells/mm<sup>3</sup>, chronic cervicitis, and seborrheic dermatitis.
- An administrative law judge denied Ms. B.L.'s disability application on May 31, 1991, and on June 20, 1991, Ms. B.L. requested that the Appeals Council review the administrative law judge's decision. The Appeals Council remanded the case to the administrative law judge, and as of December of 1991, the case was still pending.

#### Case History VI

- Mr. E.A. --is a 33-year-old male who resides in Brooklyn, New York. Mr. E.A. suffers from many HIV-related symptoms and conditions, including a CD4<sup>+</sup> lymphocyte count below 200 cells/mm<sup>3</sup>, anemia, thrombocytopenia (low platelet count), oral thrush, extreme weakness, night sweats, nausea, and bronchitis.
- From March 26, 1991, to April 31, 1991, Mr. E.A. was hospitalized at Lutheran Hospital for severe anemia. At the time he was admitted, Mr. E.A. had difficulty breathing and weakness in both legs, and he underwent 10 blood transfusions. In May of 1991, Mr. E.A. had a CD4<sup>+</sup> lymphocyte count of 335 cells/mm<sup>3</sup>. Because he could not longer work, Mr. E.A. applied for SSI benefits in June 1991 and received presumptive SSI benefits for 3 months, from June through September.
- By September, Mr. E.A.'s CD4<sup>+</sup> lymphocyte count had decreased to 193 cells/mm<sup>3</sup>. On September 9, 1991, Mr. E.A.'s application was denied by the State DDS.
- On September 30, 1991, Mr. E.A.'s treating physician of 1 year filled out a Medical Report for Determination of Disability for the SSA, which documented his low CD4<sup>+</sup> lymphocyte count, thrombocytopenia, recent hospitalization due to severe anemia, oral thrush, and an inability to tolerate AZT. Mr. E.A.'s treating physician also informed the SSA that Mr. E.A. tested high positive for exposure to toxoplasma, the protozoa that causes toxoplasmosis, an AIDS-defining condition. Nonetheless, his request for reconsideration was denied on October 22, 1991.
- On October 28, 1991, Mr E.A. requested a hearing before an administrative law judge. No hearing had been scheduled as of December 1991.

## Case History VII

- Ms. K.P. --is a 37-year-old woman living in Brooklyn, New York. She tested positive for HIV in 1988. Her impairments included pneumonia, anemia, pancreatitis, an enlarged liver due to chronic hepatitis, a positive rheumatoid factor, an elevated erythrocyte sedimentation rate, endocarditis, reduced white blood and red blood cell counts, a suppressed CD4<sup>+</sup> lymphocyte count in the range of 200 to 300+ cells/mm<sup>3</sup>, a reduced CD4<sup>+</sup>/CD8<sup>+</sup> ratio, a low platelet count, chronic bronchitis, fatigue, and nausea.
  
- Ms. K.P. applied for disability benefits in April of 1989. Her application was denied after the disability determination review classified her primary diagnosis as HIV positive and her secondary diagnosis as 'none." According to K.P. 's attorneys, at a hearing before the administrative law judge in February of 1990, a medical adviser employed by the SSA testified that a CD4<sup>+</sup> lymphocyte count in the range of 200 cells/mm<sup>3</sup> and a CD4<sup>+</sup>/CD8<sup>+</sup> cell ratio of 0.47 were not objective medical support for symptoms of chronic fatigue and weakness. The medical adviser attributed these symptoms to depression. He also testified that the endocarditis and pneumonia were completely resolved and were not AIDS-related and that the objective evidence did not support a finding of symptomatic HIV infection.