

BRB No. 02-0342 BLA

MARY JANE ADDIS-COMBS)	
(Surviving Daughter of PEARL COMBS)))
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: _____
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED))	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Rudolf L. Jensen, Administrative Law Judge, United States Department of Labor.

David A. Laite (Brown, Lippert, Heile & Evans), Cincinnati, Ohio, for claimant.

Timothy S. Williams (Eugene Scalia, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order - Denying Benefits (00-BLA-0846) of Administrative Law Judge Rudolf L. Jensen (the administrative law judge) on a claim for survivor's benefits filed pursuant to the provisions of Title IV of the Federal Coal Mine

¹Claimant was born on September 28, 1946, and is the surviving daughter of the deceased miner, Pearl Combs. Claimant's Exhibits 1, 2. The Department of Labor awarded the miner benefits on February 6, 1979, retroactive to August of 1977. Director's Exhibit 8. Following the miner's death on October 10, 1983, the miner's widow, claimant's mother Myrtle Combs, was awarded augmented benefits on November 1, 1983. Director's Exhibit 9. Claimant filed the instant claim for benefits on January 13, 2000. Director's Exhibit 1.

Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).² The administrative law judge found that while the evidence documents claimant’s traumatic and chaotic childhood and shows that claimant was diagnosed in 2001 with schizoaffective disorder, depressive type,³ there is no medical evidence sufficient to demonstrate that claimant was disabled before she attained age 22 under 20 C.F.R. §725.221, as “disability” is defined under Section 223(d) of the Social Security Act, 42 U.S.C. §423(d). The administrative law judge found, therefore, that claimant had not demonstrated her dependency upon the miner under 20 C.F.R. §725.209.

On appeal, claimant contends that contrary to the administrative law judge’s finding, the record contains medical opinions diagnosing her as disabled before attaining age 22. Claimant relies on the opinions rendered by her psychiatrist, Cory Pelnick, M.D., and her therapist, Michele Pelnick, Ph.D., *see* Claimant’s Exhibits 1, 2. Specifically, claimant notes that in their August 17, 2000 opinion, Drs. Pelnick and Pelnick state, *inter alia*, “[Claimant] has a long history of psychiatric treatment dating back to her childhood. Although these early records are unlikely to be obtainable, it is our opinion that [claimant’s] psychiatric disability dates back to her youth.” Claimant’s Exhibit 2. Claimant contends that the administrative law judge failed to consider fully this medical opinion, and asserts that claimant’s “childhood” would “obvious[ly]” refer to the time before she attained age 22. Claimant’s Brief at 3. The Director, Office of Workers’ Compensation Programs (the Director), responds, and seeks affirmance of the decision below. The Director concedes that the August 17, 2000 opinion rendered by Drs. Pelnick and Pelnick suggests that claimant’s condition dates back to her childhood but argues that the administrative law judge reasonably determined that it does not convincingly establish claimant’s disability before attaining age 22. The Director further asserts that the statement by Drs. Pelnick and Pelnick that claimant

²The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726. All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³The record shows that claimant was diagnosed with, *inter alia*, dysthymic disorder and major depression episode/dysthymia as early as 1994. Claimant’s Exhibit 3.

was placed in a “psychiatric institution for nine months at age 13,” Claimant’s Exhibit 2, is “misleading” where claimant testified at the hearing that the facility was called a “Girls Industrial School” which she described as a “reform school.” Hearing Transcript at 33-34.

The Board’s scope of review is defined by statute. If the administrative law judge’s findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The regulations provide that a child of a deceased miner is entitled to benefits if the standards of relationship and dependency are met. In the instant case, it is undisputed that claimant meets the relationship requirement as she is the deceased miner’s daughter. *See* Claimant’s Exhibit 3. Therefore, claimant must establish her dependency on the deceased miner. An unmarried adult child satisfies the dependency requirement if such child is 18 years of age or older and is under a disability as defined in Section 223(d) of the Social Security Act, 42 U.S.C. §423(d), provided that the disability began before the child attained age 22. 20 C.F.R. §§725.209, 725.221. Under the Social Security Act, “disability” means an “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months...” 42 U.S.C. §423(d)(1)(A).

Claimant relies on medical opinions rendered by her psychiatrist, Dr. Cory Pelnick, and her therapist, Dr. Michele Pelnick, to challenge the administrative law judge’s finding that there is no medical evidence sufficient to demonstrate that claimant was disabled, as defined under Section 223(d) of the Social Security Act, 42 U.S.C. §423(d), before attaining age 22, and that therefore, claimant cannot establish the requisite dependency on the deceased miner. In their August 17, 2000 opinion, Drs. Pelnick and Pelnick opined as follows:

[Claimant] has been a patient at the Center since January 1999. She has a long history of psychiatric treatment dating back to her childhood. Although these early records are unlikely to be obtainable, it is our opinion that [claimant’s] psychiatric disability dates back to her youth. Mary is a good historian who reports an extremely chaotic, abusive childhood with multiple traumatic

experiences. She reports being removed from the home and placed in a psychiatric institution for nine months at age 13. She recalls being in mental health treatment through Family Services in Cincinnati for as long as she can remember. Her capacity to care for herself has been significantly limited throughout her life. [Claimant] relied upon her father for financial and emotional support until his death in 1983.

Claimant's Exhibit 2. In their January 17, 2001 opinion, claimant's psychiatrists indicated that although childhood records are unavailable, more recent records include reports by claimant of a "chaotic, abusive childhood during which she had a dependent relationship with her father, on whom she relied for both financial and emotional support." Claimant's Exhibit 1. Drs. Pelnick and Pelnick also stated therein that their "working diagnosis" is schizoaffective disorder, depressed type, and noted that claimant has a "lengthy history of auditory hallucinations, debilitating symptoms of depression and anxiety as well as chronic suicidal ideation." *Id.*

After consideration of the administrative law judge's findings, the parties' contentions, and the evidence of record, we affirm the decision below as it is supported by substantial evidence, rational, and is in accordance with applicable law. The administrative law judge properly found that the medical evidence consists of current treatment records for claimant's problems. Specifically, the record reveals that in 2000, Drs. Pelnick and Pelnick indicated that claimant has been a patient "at the Center" since January of 1999, Claimant's Exhibit 2, and further indicated, in 2001, that their "working diagnosis" is schizoaffective disorder, depressed type, Claimant's Exhibit 1. The record also contains medical office notes showing that claimant was diagnosed with, *inter alia*, dysthymic disorder and major depression episode/dysthymia in 1994. Claimant's Exhibit 3. The administrative law judge properly determined, however, that the record contains no medical opinion which diagnoses claimant as disabled, within the meaning of Section 223(d) of the Social Security Act, before attaining age 22. Specifically, the administrative law judge found:

Drs. Pelnick and Pelnick opine that [claimant's] capacity to care for herself has been "significantly limited" throughout her life, but there is no diagnosis made as to what impairment caused this limitation of capacity nor the time at which this incapacity began. Without such a diagnosis, I simply cannot analyze the testimony and make a determination that she suffered a disability prior to age twenty-two. A letter dated May 7, 2001, was received from Claimant's

attorney containing a report from the Ohio Department of Youth Services, stating that all of [claimant's] childhood records were destroyed approximately thirty years ago. (CX 14).

Decision and Order at 6. The administrative law judge further found:

In this case, lay testimony documents a chaotic and traumatic life. This evidence, together with medical opinions demonstrating mental disability prior to age twenty-two, would be sufficient to show dependency pursuant to 20 C.F.R. §725.221. However, there simply is no medical evidence sufficient to demonstrate that claimant was disabled, as defined in 42 U.S.C. §423, prior to her twenty-second birthday. Her childhood records have been destroyed, her medical records from Queen City/Mitchell Mental Health Services are relevant to her current psychiatric state only, her social security letter contains no information regarding her condition, and the letters from her psychiatrists do not make diagnoses relating to her childhood. She, therefore, can not demonstrate dependency upon her father for purposes of receiving survivor's benefits under the Act.

Decision and Order at 7. The administrative law judge thereby permissibly determined that claimant's doctors, whose treatment of claimant dates only from 1999 and whose assessment of claimant is expressed in their opinions contained in Claimant's Exhibits 1 and 2, did not identify with any specificity or otherwise "make diagnoses" of any disability which claimant might have experienced in her childhood. *See generally Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); Decision and Order at 7. Given the totality of the medical opinions of record, the earliest of which is from 1994 when claimant was forty-eight years old, *see* Claimant's Exhibit 3, Director's Exhibit 1, we hold that substantial evidence supports the administrative law judge's finding that the record contains no medical opinion sufficient to demonstrate that claimant was disabled, as defined under Section 223 of the Social Security Act, before attaining age 22. 20 C.F.R. §725.221.

Based on the foregoing, we affirm the administrative law judge's finding that the evidence is insufficient to establish claimant's dependency on the deceased miner as required under 20 C.F.R. §725.209. We, therefore, affirm the administrative law judges denial of benefits in the instant survivor's claim.

Accordingly, the administrative law judge's Decision and Order - Denying benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge