



**SOCIAL SECURITY ADMINISTRATION**

Office of Disability Adjudication and Review  
SSA ODAR NHC  
Suite 1400  
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Alexandria, VA 22302-1473

Date: May 9, 2017

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**Notice of Decision – Unfavorable**

I carefully reviewed the facts of your case and made the enclosed decision. Please read this notice and my decision.

**If You Disagree With My Decision**

If you disagree with my decision, you may file an appeal with the Appeals Council.

**How To File An Appeal**

To file an appeal you or your representative must ask in writing that the Appeals Council review my decision. You may use our Request for Review form (HA-520) or write a letter. The form is available at [www.socialsecurity.gov](http://www.socialsecurity.gov). Please put the Social Security number shown above on any appeal you file. If you need help, you may file in person at any Social Security or hearing office.

Please send your request to:

**Appeals Council  
Office of Disability Adjudication and Review  
5107 Leesburg Pike  
Falls Church, VA 22041-3255**

**Time Limit To File An Appeal**

You must file your written appeal within 60 days of the date you get this notice. The Appeals Council assumes you got this notice 5 days after the date of the notice unless you show you did not get it within the 5-day period.

The Appeals Council will dismiss a late request unless you show you had a good reason for not filing it on time.

Form HA-L76-OP2 (03-2010)

**Suspect Social Security Fraud?**

Please visit <http://oig.ssa.gov/r> or call the Inspector General's Fraud Hotline at 1-800-269-0271 (TTY 1-866-501-2101).

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### **What Else You May Send Us**

You or your representative may send us a written statement about your case. You may also send us new evidence. You should send your written statement and any new evidence **with your appeal**. Sending your written statement and any new evidence with your appeal may help us review your case sooner.

### **How An Appeal Works**

The Appeals Council will consider your entire case. It will consider all of my decision, even the parts with which you agree. Review can make any part of my decision more or less favorable or unfavorable to you. The rules the Appeals Council uses are in the Code of Federal Regulations, Title 20, Chapter III, Part 416 (Subpart N).

The Appeals Council may:

- Deny your appeal,
- Return your case to me or another administrative law judge for a new decision,
- Issue its own decision, or
- Dismiss your case.

The Appeals Council will send you a notice telling you what it decides to do. If the Appeals Council denies your appeal, my decision will become the final decision.

### **The Appeals Council May Review My Decision On Its Own**

The Appeals Council may review my decision even if you do not appeal. If the Appeals Council reviews your case on its own, it will send you a notice within 60 days of the date of this notice.

### **When There Is No Appeals Council Review**

If you do not appeal and the Appeals Council does not review my decision on its own, my decision will become final. A final decision can be changed only under special circumstances. You will not have the right to Federal court review.

### **New Application**

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with my decision and you file a new application instead of appealing, you might lose some benefits or not qualify for benefits at all. If you disagree with my decision, you should file an appeal within 60 days.

### **If You Have Any Questions**

We invite you to visit our website located at [www.socialsecurity.gov](http://www.socialsecurity.gov) to find answers to general





At step one, the undersigned must determine whether the claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has demonstrated the ability to engage in SGA (20 CFR 416.974 and 416.975). If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the undersigned must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

At step three, the undersigned must determine whether the claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the undersigned must first determine the claimant's residual functional capacity (20 CFR 416.920(e)). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the undersigned must consider all of the claimant's impairments, including impairments that are not severe (20 CFR 416.920(e) and 416.945; SSR 96-8p).

Next, the undersigned must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 416.960(b) and 416.965). If the claimant has the residual functional capacity to do his past relevant work, the



carefully considered the criteria of all listings, including those in sections 12.05 (intellectual disorder) and 12.10 (autistic disorder and other pervasive developmental disorders) of Appendix 1.

The severity of the claimant's mental impairments, considered singly and in combination, do not meet or medically equal the criteria of listings 12.05 and 12.10. In making this finding, the undersigned has considered whether the "paragraph B" criteria are satisfied. To satisfy the "paragraph B" criteria, the mental impairments must result in at least one extreme or two marked limitations in a broad area of functioning which are: understanding, remembering, or applying information; interacting with others; concentrating, persisting, or maintaining pace; or adapting or managing themselves. A marked limitation means functioning in this area independently, appropriately, effectively, and on a sustained basis is seriously limited. An extreme limitation is the inability to function independently, appropriately or effectively, and on a sustained basis.

In understanding, remembering, or applying information, the claimant has moderate limitations. The claimant has received special education services since pre-kindergarten. (Exhibit 3F). His individualized education plan (IEP) demonstrates that he has deficits in reading, math, and processing. (Exhibit 7F). He has required special instruction in an environmental with a small student-to-teacher ratio and minimal distractions. During his April 2015 psychological consultative examination, the claimant had trouble answering open-ended questions. (Exhibit 3F). However, the record does not support marked limitations in this area. During his 2015 psychological consultative examination, the claimant was able to recall 3/3 items immediately and after a five-minute delay, complete simple calculations and serial 3s, and recall six digits forward and five digits back. (Exhibit 3F). (His recent and remote memory were intact, and he demonstrated fair judgment and insight.) During his February 2017 psychological examination, the claimant was able to focus and complete the required tasks. (Exhibit 10F). At the hearing, the claimant testified that he has learned how to use Microsoft PowerPoint, Word, and Access. He also testified that he understood how to do laundry, use a computer and play video games. He stated that he has a learner's permit. Overall, the record supports no more than moderate limitation in this area.

(In interacting with others, the claimant has moderate limitations.) The claimant's 2015 IEP indicates that he has difficulty with social interactions and attention skills. (Exhibit 16E). Psychological consultative examiner [redacted], Ph.D., noted that he was socially awkward with poorly focused eye contact. (Exhibit 3F). (However, the claimant reported that he is able to play games with other students and go to the park and library.) (Exhibit 3E). He reported no problem getting along with others.) During his February 2017 psychological examination, the claimant was cooperative, polite, and pleasant, with good eye contact. (Exhibit 10F). He reported that he enjoyed going to the mall and taking the train to Grand Central Station in New York City. (Exhibit 9F). His teachers have reported that he is cooperative, compliant, and respectful. (Exhibit 10F). They have noted that he gets along with his peers and that he is an active participant in class discussions and activities. The claimant testified that he would like to be a cashier—a job that requires interaction with the public. The overall evidence of record also supports no more than moderate limitation in this area.

With regard to concentrating, persisting, or maintaining pace, the claimant has moderate limitations. At the hearing, the claimant's mother testified that he has to be reminded to stay on task. The claimant reported that he could remain focused for one to two minutes before needing a reminder. (Exhibit 3E). April 2015 classroom observations show that he required refocusing prompts and teacher assistance. (Exhibit 16E). However, during psychological evaluations he has demonstrated normal thought process, attention, and concentration. (Exhibits 3F; 10F). He was motivated and able to take his time to focus on tasks. Additionally, the record shows that the claimant is able to sustain concentration and persist at video games and using a computer. (Exhibit 9F). Therefore, the record supports moderate limitations with regard to concentration, persistence, or pace.

As for adapting or managing oneself, the claimant has experienced moderate limitations. The claimant's mother testified that he does not do household chores and cannot travel by himself. The claimant reported that his parents assist with tasks of personal care, cooking, and completing housework. (Exhibit 3E). However, he reported that he is able to do his own laundry. (The record indicates that he is independent in his activities of daily living. (Exhibit 9F). He is able to remain at home alone, dial 911 for emergencies, and determine what situations are emergencies. He is also able to use a microwave, dress himself, and maintain grooming. (Exhibit 3F). Thus, the record supports no more than moderate limitation in this area.

Because the claimant's mental impairments do not cause at least two "marked" limitations or one "extreme" limitation, the "paragraph B" criteria are not satisfied.

The limitations identified in the "paragraph B" criteria are not a residual functional capacity assessment but are used to rate the severity of mental impairments at steps 2 and 3 of the sequential evaluation process. The mental residual functional capacity assessment used at steps 4 and 5 of the sequential evaluation process requires a more detailed assessment. The following residual functional capacity assessment reflects the degree of limitation the undersigned has found in the "paragraph B" mental functional analysis.

Turning back to listing 12.05, paragraph A requires the following:

1. Significantly subaverage general intellectual functioning evident in your cognitive inability to function at a level required to participate in standardized testing of intellectual functioning; and
2. Significant deficits in adaptive functioning currently manifested by your dependence upon others for personal needs (for example, toileting, eating, dressing, or bathing); and
3. The evidence about your current intellectual and adaptive functioning and about the history of your disorder demonstrates or supports the conclusion that the disorder began prior to your attainment of age 22.

In this case, these requirements are not met because the claimant has been able to participate in several standardized tests of intellectual functioning. (Exhibits 3F; 10F). He is also able to



maintain tasks of personal care, including dressing himself, bathing, and toileting independently. (Exhibits 3E; 3F; 9F).

Paragraph B requires the following:

1. Significantly subaverage general intellectual functioning evidenced by a or b:
  - a. A full scale (or comparable) IQ score of 70 or below on an individually administered standardized test of general intelligence; or
  - b. A full scale (or comparable) IQ score of 71-75 accompanied by a verbal or performance IQ score (or comparable part score) of 70 or below on an individually administered standardized test of general intelligence; and
2. Significant deficits in adaptive functioning currently manifested by an extreme limitation of one, or marked limitation of two, in the following areas of mental functioning:
  - a. Understand, remember, or apply information (see 12.00E1); or
  - b. Interact with others (see 12.00E2); or
  - c. Concentrate, persist, or maintain pace (see 12.00E3); or
  - d. Adapt or manage oneself (see 12.00E4); and
3. The evidence about your current intellectual and adaptive functioning and about the history of your disorder demonstrates or supports the conclusion that the disorder began prior to your attainment of age 22.

In this case, these requirements are not met because the claimant's full-scale IQ score is above 70. (Exhibits 1F; 5F; 10F). Moreover, as detailed above, he does not have an extreme limitation in one, or marked limitation of two of the four areas of mental functioning.

4. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform a full range of work at all exertional levels but with the following nonexertional limitations: the claimant can perform unskilled work involving simple, repetitive, rote tasks, which would allow him to have a regular work break approximately every two hours, and where interactions with co-workers and supervisors are limited to approximately one-third of the workday, which does not involve interacting with the public as part of his job responsibilities, and which does not involve the performance of fast-paced assembly work.

In making this finding, the undersigned has considered all symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence, based on the requirements of 20 CFR 416.929 and SSR 96-4p. The

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score in the borderline range. (Exhibit 1F/21). He received a verbal comprehension score of 83, perceptual reasoning score of 82, working memory score of 89, processing speed score of 59, and general ability score of 80.

During an April 2015 psychological consultative examination with \_\_\_\_\_, Ph.D., the claimant was cooperative and well groomed with normal posture and motor behavior, but poor eye contact. (Exhibit 3F). \_\_\_\_\_ noted that the claimant had trouble with open-ended questions, but also had concrete and goal-directed thought processes, intact attention and concentration, intact recent and remote memory skills, and fair judgment and insight. Dr. Acer noted a diagnosis of autism spectrum disorder.

The claimant's IEPs and testing reflect some improvement over time. (Exhibits 7F; 8F). These records indicate that the claimant enjoys school and is able to participate well in team activities. In addition to special education services, he receives counseling and speech therapy. (The record indicates that the claimant is able to write simple narratives to describe real or imagined experiences and solve simple equations. (Exhibit 7F/4). Teachers have noted that he learns best with minimal distractions and responds well to structure and clearly defined expectations. (Exhibit 10F).

During his February 2017 psychological examination, \_\_\_\_\_ was able to easily establish rapport with the claimant, who was polite, pleasant, attentive and cooperative during the evaluation. (Exhibit 10F). The claimant maintained eye contact throughout the evaluation and focused on tasks. \_\_\_\_\_ noted that the claimant appeared motivated and approached many of the items in a cautious and deliberate manner. The claimant demonstrated adequate reciprocal social skills and did not seem anxious. \_\_\_\_\_ administered the WAIS-IV again, and the claimant received a full-scale IQ score of 75. He received a verbal score of 78, perceptual reasoning score of 90, working memory score of 83, and processing speed score of 62.

Overall, the record does not support greater limitations than included in the above residual functional capacity assessment. The effects of the claimant's impairments are accommodated by limitations to simple and repetitive tasks, with limited social interaction and regular breaks, and without fast-paced work. These limitations are supported by evidence that the claimant performs below age-level in math, reading, and overall language skills. (Exhibits 7F; 8E; 10F). These limitations are also supported the claimant's scores on intelligence testing, and by evidence that he has difficulty with focus. However, evidence that the claimant is able to learn Microsoft Office, use a computer, play video games, read a newspaper, perform simple calculations, focus during psychological evaluations, and perform tasks of personal care does not support greater cognitive limitations. (Hearing Testimony; Exhibits 3F; 9F; 10F). Evidence that he is able to get along well with peers, display friendly and cooperative behavior, participate in class discussions and activities, and go out in public with his father to shop and explore crowded train stations does not support greater social limitations. (Exhibits 9F; 10F). The record also does not show evidence of any severe physical condition that would support any exertional limitations.

As for the opinion evidence, \_\_\_\_\_, opined that the claimant had no physical limitation and no psychiatric disorder. (Exhibit 2F). This opinion is given great weight, because it is

supported by the overall evidence of record, which does not show any evidence of a physical ailment or impairment that imposes more than minimal effect on the claimant's ability to perform basic work-related activities. The claimant does not take any medication for any condition and does not receive ongoing treatment for any physical condition.

The record includes an April 2016 notation from a pediatrician who noted that the claimant's autism and pervasive developmental disorders significantly impacted his academic and social potential and performance, and that the claimant would be dependent on adult supervision for the duration of his lifetime. (Exhibit 16E/4).

This opinion is given little weight. This opinion provides little insight into how the claimant's conditions affect his vocational performance. This opinion also does not specify function-by-function limitations that would impede his ability to perform basic, work-related activities. Additionally, this opinion is not fully supported by the record. The record indicates that the claimant is able to remain at home alone. (Exhibit 9F). The claimant is also able to engage socially acceptable manners. noted that he displayed adequate reciprocal social skills. (Exhibit 10F).

Psychological consultative examiner opined that the claimant could follow and understand simple instructions and directions and may be able to perform some simple, rote tasks. also opined that the claimant could maintain attention and concentration. Dr. Acer opined that the claimant would have difficulty interacting appropriately with others and dealing with stress and learning and performing more complex tasks independently. (Exhibit 3F).

The opinion of is given great weight. opinion is generally consistent with the overall evidence of record, including her own findings on examination. On examination, noted that the claimant had poorly focused eye contact and trouble with open-ended questions. The claimant also demonstrated below average intellectual skills. However, he was able to perform simple tasks, such as recalling objects and digits and performing simple calculations and serial threes. (His attention and concentration also maintained intact.)

The record includes teacher questionnaires completed by. (Exhibits 7E; 8E). She noted that he required frequent prompting and redirection to remain on tasks and some assistance and prompting when attending and completing tasks. She also noted that the claimant's speech was understandable. evaluated the claimant using a standard applicable to claimants under the age of 18.

These reports are given some weight to the extent they are consistent with the overall evidence of record. The record supports her assessment regarding the claimant's speech. Neither nor noted issues with the claimant's speech. The claimant's educational records also indicate that he has had some difficulty with focusing. However, improvements are noted over time. (The claimant's presentation and testing results from his 2017 psychological examination revealed some progress from his 2014 examination with. (Exhibits 1F; 10F). The record also shows that the claimant has been able to attend and concentration during evaluations.)

The testimony of the claimant's mother is also given some weight. As the claimant's mother, based her opinion on daily observations of the claimant. The undersigned has considered her opinion in assessing the above residual functional capacity. However, her opinion is not fully supported by the overall evidence of record, which shows that the claimant has been able to focus and stay on task during psychological evaluations, and demonstrate normal memory, judgment, and insight.)

The record also includes a Medicaid Disability Determination stating that the claimant is disabled as of April 1, 2016 until March 31, 2019. (Exhibit 6F). However, the Social Security Administration makes determinations of disability according to Social Security law, therefore a determination of disability by another agency is not binding on this proceeding. (20 CFR 416.927). This opinion is given little weight, because it provides little probative value as to the question of whether the claimant's impairments impose significant restriction on his ability to carry out and maintain work-related activities. This determination does not specify what functional limitations cause the claimant to be "disabled." Furthermore, this determination is not supported by the overall evidence of record, which does not support debilitating limitations. As detailed above, the record indicates that, despite his impairments, the claimant is able to understand and follow simple instructions and carry out many activities of daily living independently.

The opinion of the state-agency consultant is also given little weight. (Exhibit 2A). In the mental residual functional capacity assessment, the state-agency consultant did not specify functional limitations caused by the claimant's severe impairments. Instead, the state-agency consultant included a general statement that "evidence in the file does not demonstrate ongoing marked impairments in the claimant's ability to understand, concentrate, remember, adapt, relate, or persist with tasks on a sustained basis."

Given the clinical and objective findings, diagnoses, testimony, and opinions of \_\_\_\_\_ and \_\_\_\_\_ the residual functional capacity determination as detailed above is appropriate.

5. The claimant has no past relevant work (20 CFR 416.965).
6. The claimant was born on November 6, 1996 and was 18 years old, which is defined as a younger individual age 18-49, on the date the application was filed (20 CFR 416.963).
7. The claimant has a limited education and is able to communicate in English (20 CFR 416.964).
8. Transferability of job skills is not an issue because the claimant does not have past relevant work (20 CFR 416.968).
9. Considering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform (20 CFR 416.969 and 416.969(a)).



Based on the application for supplemental security income filed on December 1, 2014, the claimant is not disabled under section 1614(a)(3)(A) of the Social Security Act.

/s/

Administrative Law Judge

May 9, 2017

Date

## LIST OF EXHIBITS

### Payment Documents/Decisions

Component No.	Description	Received	Dates	Pages
HO 1A	Disability Determination Transmittal		05/13/2015	1
HO 2A	Disability Determination Explanation		05/13/2015	9

### Jurisdictional Documents/Notices

Component No.	Description	Received	Dates	Pages
IIO 1B	T16 Notice of Disapproved Claim		05/13/2015	6
HO 2B	Misc Jurisdictional Documents/Notices		06/02/2015	1
HO 3B	Misc Jurisdictional Documents/Notices		06/02/2015	1
HO 4B	Request for Hearing by ALJ		06/04/2015	3
HO 5B	Request for Hearing by ALJ		06/04/2015	3
HO 6B	Request for Hearing Acknowledgement Letter		07/01/2015	10
HO 7B	Request for Hearing Acknowledgement Letter		07/06/2015	10
HO 8B	Outgoing ODAR Correspondence		12/09/2016	11
HO 9B	Transfer Request for Hearing		01/20/2017	2
HO 10B	Hearing Notice		02/03/2017	19
HO 11B	Notice Of Hearing Reminder		03/20/2017	1
HO 12B	Appointment of Representative		06/05/2015	2
HO 13B	Representative Fee Agreement		06/03/2015	1
HO 14B	Outgoing ODAR Correspondence		03/24/2017	3



Non-Disability Development

Component No.	Description	Received	Dates	Pages
HO 1D	Application for Supplemental Security Income Benefits		01/30/2015	6
HO 2D	Misc Non-Disability Development		03/10/2015	10
HO 3D	Misc Non-Disability Development		03/10/2015	63
HO 4D	Misc Non-Disability Development		03/10/2015	5
HO 5D	Detailed Earnings Query		01/24/2017	1
HO 6D	Summary Earnings Query		01/24/2017	1
HO 7D	Certified Earnings Records		01/25/2017	3
HO 8D	New Hire, Quarter Wage, Unemployment Query (NDNH)		01/25/2017	1
HO 9D	Misc Jurisdictional Documents/Notices		01/04/2017	20
HO 10D	WHAT - Work History Assistant Tool		03/30/2017	1
HO 11D	Misc Non-Disability Development		03/30/2017	4
HO 12D	Misc Non-Disability Development		03/30/2017	2

Disability Related Development

Component No.	Description	Received	Source	Dates	Pages
HO 1E	Disability Report - Adult			to 01/30/2015	7
HO 2E	Disability Report - Field Office			to 01/30/2015	3
HO 3E	Activities of Daily Living			to 02/12/2015	9
HO 4E	Teacher Questionnaire		RFIELDS CSD	to 03/26/2015	12

HO 5E	Report of Contact		to 04/17/2015	2
HO 6E	Report of Contact		to 05/08/2015	1
HO 7E	Teacher Questionnaire		to 05/08/2015	12
HO 8E	Teacher Questionnaire		to 05/12/2015	16
HO 9E	Disability Report - Field Office		to 06/04/2015	2
HO 10E	Disability Report - Appeals		to 06/04/2015	7
HO 11E	Work Background		to 01/03/2017	2
HO 12E	Recent Medical Treatment		to 01/03/2017	2
HO 13E	Medications		to 01/03/2017	2
HO 14E	Exhibit List to Rep PH2E		to 01/24/2017	12
HO 15E	Resume of Vocational Expert	VE:		2
HO 16E	Misc Disability Development and Documentation	claimant	07/11/2016 to 01/13/2017	26

Medical Records

Component No.	Description	Received	Source	Dates	Pages
HO 1F	Medical Evidence of Record		Several Doctors	02/18/2010 to 05/02/2014	35

HO 2F	Medical Evidence of Record		to 02/06/2015	8
HO 3F	Consultative Examination Report		to 04/03/2015	4
IIO 4F	DDS Medical Evaluation Document		to 04/27/2015	2
HO 5F	DDS Disability Worksheet		02/03/2015 to 05/13/2015	6
HO 6F	Misc Medical Records	Suffolk County Department of Social Services	07/13/2016 to 07/13/2016	2
HO 7F	Medical Evidence of Record	Individualized Educaiton Plan	07/11/2016 to 07/11/2016	13
IIO 8F	Medical Evidence of Record	Vineland Scale of Adaptive Behavior	11/02/2016 to 11/02/2016	16
HO 9F	Medical Evidence of Record	Individual Service Plan	02/02/2017 to 02/02/2017	7
HO 10F	Medical Evidence of Record	Psychological Report	02/28/2017 to 02/28/2017	15