

motion in his ankle.⁸ An MRI of his spine shows mild degenerative disc disease, as well as some other disc and spinal canal problems.⁹ He has also suffered some hearing loss.¹⁰

Mr. D testified credibly as to the impact of his various ailments. He is in pain all of the time. Without his brace he is unable to walk 50 yards. With the brace he can walk 200 yards, but he still experiences bad pain. In addition to this brace, he also uses a cane to assist him. He is able to manage cooking and other household chores, but it is difficult for him. He has trouble sitting except when he sits cross legged. He also experiences trouble with concentration when his blood sugar is too high or too low.

III. Discussion

Interim Assistance is a benefit available to individuals while they are waiting for the SSA to approve their application for Supplemental Security Income.¹¹ Among other requirements, to receive Interim Assistance an applicant must be “likely to be found disabled by the Social Security Administration.”¹² Mr. D has the burden of proof on this issue.¹³

The SSA uses a five-step evaluation process in making its disability determinations.¹⁴ For Alaska’s interim assistance determinations, however, only the first three of these steps are considered.¹⁵

Under the SSA evaluation process, each step is considered in order, and if the SSA finds the applicant either disabled or not disabled at any step, it does not consider subsequent steps.¹⁶ The first step in this process looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the SSA will find that the applicant is not disabled.¹⁷ This finding is made regardless of the applicants’ medical condition, age, education, or work experience.¹⁸

⁸ Exhibit 2.61.

⁹ Exhibit 2.84

¹⁰ Exhibit 2.88.

¹¹ 7 AAC 40.170(b); 7 AAC 40.375.

¹² 7 AAC 40.180(b)(1).

¹³ 2 AAC 64.290(e).

¹⁴ 20 CFR §416.920. This process is describe in detail in OHA Case No 11-FH-134 (Dept. of Health and Social Services 2011), pages 14 – 17.

¹⁵ See *In re L.G.*, OAH No. 12-0688-APA (Comm’nr Health & Social Services August 20, 2012).

¹⁶ 20 CFR §416.920(a)(4).

¹⁷ 20 CFR §416.920(a)(4)(i).

¹⁸ 20 CFR §416.920(b).

At step two, the SSA considers the severity of the applicant's impairment. In order to be considered disabled, the impairment or combination of impairments must be severe, and must be expected to result in death or must have lasted or be expected to last at least 12 months.¹⁹ If the impairment is not severe under this definition, then the applicant is not disabled.

At step three, the SSA looks at whether the impairment meets or equals the Listing of Impairments adopted by the SSA.²⁰ If it does, the applicant is disabled.²¹

If an applicant is found not disabled at step 3, the SSA goes on to step four. However, a recent ruling by the Commissioner of Health and Social Services interprets how the division determines eligibility for Interim Assistance. The applicable regulation for deciding whether someone is eligible for Interim Assistance is 7 AAC 40.180. That regulation directs the division to conduct a medical review to determine whether the applicant is likely to be found disabled by the SSA.²² The Commissioner held:

In determining eligibility for Interim Assistance under 7 AAC 40.180, the regulation requires the determination of whether the applicant is performing substantial gainful activity, whether the applicant's impairment is severe, whether the applicant's impairment has lasted or is expected to last for more than 12 months, and whether the applicant's impairment satisfies the criteria contained in the SSA's "Listing of Impairments." However, 7 AAC 40.180 *does not* require the Department to follow the analyses used in steps 4 and 5 of the SSI disability analysis.^[23]

The Commissioner's decision also makes clear that steps 1 – 3 of the SSA's analysis are incorporated into 7 AAC 40.180.²⁴ Accordingly, in deciding whether Mr. D is likely to be found disabled, the first three steps of the SSA analysis are applied, but only the first three steps.

In this case, the division agreed that Mr. D is not currently gainfully employed, that his diabetes is a severe impairment, and that the impairment has lasted or will last at least 12 months. Therefore, the requirements of steps one and two are met.

At step three, the division looks at the SSA listings in Appendix 1 of the SSA's disability regulations. In deciding whether an applicant meets one of these listings, the

¹⁹ 20 CFR § 416.920(a)(4)(ii); 20 CFR §416.909.

²⁰ See 20 CFR § 404, Subpart P, Appendix 1 (hereafter "Appendix 1").

²¹ 20 CFR § 416.920(a)(4)(iii).

²² 7 AAC 40.180(b)(1).

²³ *In re L.G.*, OAH Case No. 12-0688-APA, page 2 (internal footnote omitted, emphasis in original).

²⁴ *Id.* footnote 3.

division looks at the medical evidence in the record.²⁵ Any other evidence submitted by the applicant must also be considered.²⁶

For endocrine disorders such as diabetes, the SSA looks at any impairment to other body systems caused by the underlying disease.²⁷ Mr. D does have neuropathy, which falls under listing 11.14. To meet the requirements of this listing, the neuropathy must coincide with disorganization of motor function as described in listing 11.04B.²⁸ Under 11.04B, Mr. D must have “significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).”²⁹ Disorganization is defined as a “profound change in the tissues of an organ or structure which causes the loss of most or all of its proper characters.”³⁰ “The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands, and arms.”³¹ The medical records show that Mr. D has an “antalgic-style” gait and impaired balance.³² The eligibility technician who took his application noted that he had difficulty walking, had a slow gait and a limp.³³

Mr. D described how his neuropathy interferes with his walking. His testimony was credible, and consistent with the medical records. He testified that he is in constant, unbearable pain, and has trouble walking. He does use one cane when walking. He testified that he can manage to cook and do other household chores, but just barely. He is unable to walk 50 yards without his brace. He can walk further with his brace, but only with difficulty. Mr. D’s impairment, while significant and persistent, does not rise to the level that can be described as “disorganization.” Although it is with difficulty and pain, he still has motor function in his legs allowing him to walk. Mr. D does not meet the requirements of this listing.

Mr. D also has impairments of his ankle and knees. Impairments of the musculoskeletal system fall under listing 1.00. To demonstrate a functional loss for this

²⁵ 7 AAC 40.180(b)(1).

²⁶ 7 AAC 40.180(b)(3); 7 AAC 40.050(a).

²⁷ Appendix 1, 9.00B.

²⁸ Appendix 1, 11.14.

²⁹ Appendix 1, 11.04B.

³⁰ Dorland’s Illustrated Medical Dictionary (31st Ed 2007), page 560.

³¹ Appendix 1, 11.00C

³² Exhibit 2.61.

³³ Exhibit 2.39.

impairment, the applicant must show an inability to “ambulate effectively on a sustained basis for any reason, including pain[.]”³⁴

Inability to ambulate effectively means an extreme limitation of the ability to walk; *i.e.*, an impairment(s) that interferes very seriously with the individual’s ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (*see* 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.^[35]

Mr. D is able to walk using his foot brace and one cane. The need for a cane limits his use of one upper extremity, but not both. The pain Mr. D experiences while walking further limits his ability to ambulate effectively. There was no evidence, however, that Mr. D was unable to walk sufficiently to carry out his daily living activities. Mr. D does not meet the requirements of this listing.

IV. Conclusion

Mr. D has a severe impairment that has lasted or is likely to last at least 12 months. His condition does not, however, meet or equal the requirements in the Listing of Impairments. The division correctly determined that the SSA is not likely to find him disabled at step three of the analysis, and the division’s decision is affirmed.

Dated this 28th day of August, 2012.

Signed

Jeffrey A. Friedman
Administrative Law Judge

³⁴ Appendix 1, listing 1.00B (2)(a).

³⁵ Appendix 1, listing 1.00B (2)(b)(1).

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 11th day of September, 2012.

By: Signed
Name: Jeffrey A. Friedman
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]