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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)
)
 [REDACTED],) OHA Case No. 08-FH-190
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Interim Assistance on October 3, 2007. (Ex. 3.0) The Division of Public Assistance (Division) denied the application on February 12, 2008. *Id.* The Claimant requested a fair hearing contesting the denial on March 6, 2008. (Ex. 4.1)

Pursuant to Claimant's request, a hearing was initially scheduled for April 15, 2008. It was postponed several times at the Claimant's request. The hearing was held on June 5, and June 26, 2008. [REDACTED] appeared telephonically on both dates. [REDACTED] appeared telephonically on June 26, 2008 and represented the Claimant.

[REDACTED], Public Assistance Analyst with the Division, attended in person on both dates to represent the Division. [REDACTED], a registered nurse with the Division, attended telephonically and testified on behalf of the Division on June 26, 2008.

ISSUE

Was the Division correct to deny the Claimant's October 3, 2007 request for Interim Assistance benefits because the medical evidence allegedly did not support her disability claim?

FINDINGS OF FACT

1. The Claimant is currently [REDACTED] years old (birthdate [REDACTED]). (Ex. 1) She has a high school diploma. She has several years of college education.

2. The Claimant's work history consists primarily of physical labor. She has worked in farming, as a waitress, bartender, housecleaner, and a cook. The Claimant is unemployed. She said she recently turned down several cooking job offers because she could not stand all day.
3. The Claimant had reconstructive surgery on her left knee in August 2005. (Ex. 2, p. 32)
4. The Claimant was injured in a motor vehicle accident in December 2006. (Ex. 2, p. 31)
5. On April 17, 2007, the Claimant completed a patient information form for Advanced Medical Centers of Alaska. (Ex. 2, pp. 41 – 50) In that form, she stated she walked her dogs several blocks daily, and that she walked "a few miles if I have to" on occasion. (Ex. 2, p. 49) She also indicated she experienced constant headaches from neck pain, numbness in her hands and legs, and blurry vision. (Ex. 2, p. 48)
6. Dr. ████████ M.D., with Advanced Medical Centers, examined the Claimant on April 18, 2007. (Ex. 2, p. 31) His examination notes referred to January 18, 2007 diagnostic studies, and diagnosed her with Cervical brachial neuritis, lumbosacral radiculopathy, facetogenic derangement of the cervical spine, and cervicogenic headaches status post trauma. (Ex. 2, pp. 33 – 34) Dr. ████████ found the Claimant had a normal gait, with no impairment of strength (5/5) in her upper and lower extremities, limited flexion on both the cervical and lumbosacral spine, and a positive straight leg raise on the left. (Ex. 2, p. 33) Dr. ████████ also examined the Claimant on June 6, 2007. His notes from the June 6, 2007 exam were consistent with his April 18, 2007 examination. (Ex. 2, pp. 51 - 52)
7. The Claimant had a cervical spine MRI performed on April 20, 2007. The radiology report found "C6-7 BROAD DISK PROTRUSION AND ANNULAR TEAR WITH SUPERIMPOSED LEFT FORAMINAL DISK EXTRUSION. THERE IS SIGNIFICANT MARROW EDEMA IN C6-7. THIS IS LIKELY REACTIVE MARROW EDEMA SECONDARY TO THE DISK DISEASE" and "ADDITIONAL MILD CANAL STENOSIS FROM C3-4 THROUGH C5-6." (Ex. 2, pp. 119 – 120)
8. The Claimant had a lumbar spine MRI performed on June 8, 2007. The radiology report found "MILD L4-5 AND L5-S1 DISKOGENIC SPONDYLOSIS, WITH BILATERAL MILD NEURAL FORAMINAL NARROWING" and "FOCAL L5-S1 MILD DEGENERATIVE DISK DISEASE CHANGE WITH MULTILEVEL INFERIOR LUMBAR MODERAGE DEGENERATIVE FACET ARTHROSIS." (Ex. 2, pp. 117 – 118)
9. The Claimant had a nerve conduction study performed on July 9, 2007. The study found that she had marked nerve conduction impairment on her right (L5) peroneal nerve, mild nerve conduction impairment on her left (L5) peroneal nerve, and marked nerve conduction impairment on her right (S1) sural nerve. (Ex. 2, p. 75)
10. Dr. ████████ completed a Preliminary Examination for Interim Assistance form (AD #2) for the Claimant on June 6, 2007. That Preliminary Examination form diagnosed the Claimant with traumatic cervical radiculopathy, whiplash with facet joint derangement cervical, lumbar traumatic facet joint injury, lumbar radiculopathy, and cervicogenic headaches. (Ex. 2, pp. 5 –6) Dr. ████████ indicated the Claimant was expected to recover within six months. (Ex. 2, p. 6)

11. On August 8, 2007, Dr. [REDACTED] recommended the following restrictions for the Claimant: lift a maximum of 5 pounds frequently, 10 pounds occasionally, pushing/pulling 20 pounds, sitting for a maximum of 30 minutes, standing for a maximum of 30 minutes, up to 6 hours per day, and that the Claimant be allowed frequent position changes, and rest breaks every 15 to 50 minutes. (Ex. 2, p. 71)

12. Dr. [REDACTED], M.D., completed a Preliminary Examination for Interim Assistance form (AD #2) for the Claimant on October 30, 2007. That Preliminary Examination form diagnosed the Claimant with hypertension, cervicalgia with herniated disk at C6 –7, arthritis, fatigue, gastritis, and *Helicobacter pylori*. (Ex. 2, pp. 2 –3) Dr. [REDACTED] indicated the Claimant would recover from these conditions, but that she would require 12 or more months for recovery. (Ex. 2, p. 3)

13. The Claimant testified about her pain and physical condition. She stated she could sit for two to three hours, then she needed to move and that it took her some time to recover. She said she could not stand for more than an hour or two, after which time she needed to sit down. She said she could walk for about 15 minutes. She stated her doctors told her she could lift up to 20 pounds, which she has to do several times per day. She said she could not lift heavy items. She also stated she needed to lie down three to four times per day for about ten minutes each time. She said she gets headaches that rate a ten on a pain scale from one to ten, and that she becomes nauseous due to the headaches at least once per day. She also testified about experiencing numbness in her hands and left leg. She said the numbness had improved within the past year, but that it still occurred when she woke up in the morning.

14. Ms. [REDACTED] is a registered nurse employed by the Division, who reviews medical information for state Interim Assistance determinations. Ms. [REDACTED] testified about the Claimant’s various health conditions. She stated the Claimant was not severely impaired. She said the Claimant’s conditions did not meet or equal the Social Security disability listings of impairments. She agreed that the Claimant could not perform work that required standing for long periods of time, and that she was “more likely” limited to sedentary work.

PRINCIPLES OF LAW

This case involves an application for Interim Assistance benefits. When an application is denied, the applicant has the burden of proof¹ by a preponderance of the evidence.²

Interim Assistance is a benefit provided by the state to Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve the Supplemental Security Income application. 7 AAC 40.170(a) and (b); AS 47.25.255.

¹ “Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)

² Preponderance of the evidence is defined as follows:

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Black’s Law Dictionary 1064 (5th Ed. 1979)

In order to qualify for Interim Assistance, the applicant must satisfy the Social Security Supplemental Security Income disability requirements as set forth in the Social Security regulations. 7 AAC 40.180(b)(1). The Social Security regulations set out a very specific multistep process that must be followed in order to determine whether someone is disabled:

1. Is the applicant performing substantial gainful employment as defined by the applicable Social Security regulations?³ If so, the applicant is not disabled. 20 CFR 416.920(a)(4)(i). If the applicant is not performing substantial gainful employment, then the applicant must satisfy the next question.

2. Is the applicant's impairment severe? A severe impairment is one that "significantly limits [a person's] physical or mental ability to do basic work activities." 20 CFR 416.920(c). Medical evidence is required to establish an applicant's impairment. 20 CFR 416.908. If an applicant has multiple impairments, the combined effect of all the impairments must be considered in determining whether an applicant is severely impaired. 20 CFR 416.923. If the impairment is not severe, the applicant is not disabled. 20 CFR 416.920(a)(4)(ii). If an applicant is severely impaired, then the applicant must satisfy the next question.

3. Has the applicant's severe impairment lasted for a continuous period of at least 12 months, or can it be expected to last for a continuous period of at least twelve months? 20 CFR 416.909. If the severe impairment does not satisfy this duration requirement, the applicant is not disabled. 20 CFR 416.920(a)(4)(ii). If the severe impairment satisfies this duration requirement, the applicant must satisfy the next question.

4. Does the applicant's severe impairment meet or medically equal the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1? If it does, the applicant is disabled and no further inquiry is required. 20 CFR 416.920(a)(4)(iii). If the severe impairment does not meet or medically equal the listing of impairments, then the applicant must satisfy the next question.

5. Does the applicant's severe impairment prevent her from doing her previous relevant work? This involves an evaluation of the applicant's residual functional capacity. If the applicant is not prevented from performing her previous relevant work, the applicant is not disabled. 20 CFR 416.920(a)(4)(iv). Otherwise, the applicant must satisfy the next question.

6. Is the applicant capable of performing other work? Answering this question requires the application of the Social Security medical vocational guidelines that include the evaluation of the applicant's residual functional capacity, age, education, English literacy, and previous work experience. If the applicant is not capable of performing other work, she is disabled. 20 CFR 416.920(a)(4)(v).

³ The cases that appear in front of this office usually do not require resolution of this issue; our inquiry process begins with question No. 2.

In determining whether a person can perform other work, the Social Security regulations define the characteristics of different levels of work:

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities.

20 CFR 416.967(b).

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 CFR 416.967(a).

ANALYSIS

It is necessary to review the evidence in this case and decide, using the multistep Social Security disability analysis, if the Claimant's impairments satisfy the Social Security disability criteria. If they do, the Claimant is disabled by Social Security standards and eligible for Interim Assistance benefits. If they do not, the Claimant is not disabled by Social Security standards and not eligible for Interim Assistance benefits.

The Preliminary Examination forms completed by Drs. [REDACTED] and [REDACTED] diagnose the Claimant with a number of impairments. These are hypertension, cervicgia with herniated disk at C6 -7, arthritis, fatigue, gastritis, Heliobacter pylori, traumatic cervical radiculopathy, whiplash with facet joint derangement cervical, lumbar traumatic facet joint injury, lumbar radiculopathy, and cervicogenic headaches. (Ex. 2, pp. 2 - 3, 5 -6) There is no evidence in the record demonstrating the Claimant's ability to function is affected by her hypertension, gastritis, or Heliobacter pylori. This decision will therefore only address the Claimant's spinal related injuries.

The Claimant has a number of medically documented spinal related injuries, arthritis, cervicgia with herniated disk at C6 -7, traumatic cervical radiculopathy, whiplash with facet joint derangement cervical, lumbar traumatic facet joint injury, lumbar radiculopathy, and cervicogenic headaches. Because there is no separate medical evidence on the issue of her fatigue, this decision assumes the fatigue is related to the Claimant's spinal injuries.

The Claimant is currently unemployed. She therefore satisfies the first step of the Social Security disability analysis. It is therefore necessary to proceed to the next step, whether she is severely impaired.

The Division's medical witness stated the Claimant was not severely impaired. She later testified the Claimant could not perform work requiring long periods of standing, and that the Claimant was "more likely" limited to sedentary work. This acknowledgement of limitations contradicts her statement that the Claimant was not severely impaired. It also satisfied the Social Security definition of a severe impairment, being one that "significantly limits [a person's] physical or mental ability to do basic work activities." 20 CFR 416.920(c). The Claimant is therefore severely impaired by her spinal injuries. It is necessary to proceed to the next step in the Social Security disability analysis.

The next step is to decide whether or not the Claimant's severe impairment has lasted or can be expected to last for a continuous period of at least 12 months. The Division agreed that the Claimant satisfied this durational requirement. It is therefore necessary to proceed to the next step in the Social Security disability analysis.

The next step is to decide whether or not the Claimant's severe impairments meet or medically equal the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1. The Social Security disability system classifies her spinal injuries under the musculoskeletal listing. 20 CFR Pt. 404, Subpt. P, App. 1, § 1.

In order for the Claimant to meet or medically equal the criteria set out in the musculoskeletal listing, she must have "an extreme limitation of the ability to walk" or "an extreme loss of function of both upper extremities." 20 CFR Pt 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1) and 1.00(B)(2)(c). The medical evidence regarding the Claimant's ability to walk states she has a normal gait as of June 6, 2007. (Ex. 2, p. 51) The Claimant's testimony, although not medical evidence, was that she could walk for 15 minutes. This does not establish that she has "an extreme limitation of the ability to walk." Similarly, there is no medical evidence establish that she has "an extreme loss of function of both upper extremities." Because the Claimant has not established either an extreme loss of function on both upper extremities (right and left arm) or "an extreme limitation of the ability to walk," she does not meet or medically equal the Social Security listing of impairments for the musculoskeletal category.

Because the Claimant's disk disease does not meet or medically equal the Social Security listing of impairments, as discussed above, it is necessary to proceed to the next question in the Social Security disability analysis: whether or not the Claimant's severe impairments prevents her from doing her previous relevant work.

The Claimant's previous relevant work was physical. Her occupations, farming, bartending, waitressing, cooking, and housecleaning, all involved a great deal of standing. The Division's medical reviewer agreed the Claimant could not perform occupations that required a great deal of standing, i.e. that she could not perform her previous work. It is therefore necessary to proceed to the next step in the Social Security disability analysis, determining what level of work the Claimant can perform.

The Division's medical reviewer stated the Claimant was "more likely" limited to sedentary work. Sedentary work involves mainly sitting, occasionally lifting or carrying articles like docket files, ledgers, and small tools, with occasional walking and standing, and lifting up to 10 pounds. *See* 20 CFR 416.967(a). The Claimant's testimony that she can occasionally lift 20 pounds does not qualify

her for light work, as compared to sedentary work, given the fact she cannot stand for long periods of time. The evidence regarding the Claimant's limitations, both medical and the Claimant's testimony, supports the conclusion that Claimant is limited to sedentary work because of the Claimant's limitations on standing.

The Claimant experiences pain from her impairments. She testified about the pain caused by her headaches, which cause her to become nauseous daily. Her pain is a non-exertional limitation. 20 CFR 416.969a.

When a person has both exertional and non-exertional limitations that limit her ability to work, it is not necessary to strictly follow the medical vocational rules located at 20 CFR Pt. 404, Subpt. P, App. 2. 20 CFR 416.969a(d). Those rules do not mandate a result, but merely provide a framework for a decision. *Id.* Those rules for a person Claimant's age, 48, who has a high school degree, with primarily unskilled work experience, normally direct a conclusion that the Claimant is not disabled. 20 CFR Pt. 404, Subpt. P, App. 2, § 201.21. The Claimant's testimony about her physical abilities was consistent with her ability to perform sedentary work. It should also be noted that the Claimant's testimony about her ability to stand up to an hour and to sit for several hours indicates her physical condition has improved since Dr. ████████ restricted her to sitting and standing for a maximum of thirty minutes at a time on August 8, 2007. (Ex. 2, p. 71) Given her testimony about her physical abilities, her pain and nausea is not sufficient to justify a departure from the medical vocational rules. Accordingly, given the Claimant's limitation to sedentary work, her age, her education, and her work experience, she is not disabled according to the relevant medical vocational rule 20 CFR Pt. 404, Subpt. P, App. 2, § 201.21.

The evidence in this case establishes the Claimant's severe physical impairment does not cause her to be disabled according to the Social Security disability rules. The Division was therefore correct when it denied her application for Interim Assistance.

CONCLUSIONS OF LAW

1. The Claimant experiences a severe medical condition, spinal injuries, that has lasted or can be expected to last for 12 months or longer, that qualifies her as severely impaired according to the Social Security disability regulations.
2. Her spinal injuries do not meet or medically equal the Social Security listings of impairments.
3. The Claimant is not capable of performing her previous relevant work.
4. The Claimant, due to her impairments, is limited to sedentary work.
5. Taking the Claimant's age, education, and work experience into account, she is not disabled according to Social Security disability rules.
6. The Division was therefore correct when it denied the Claimant's October 3, 2007 request for Interim Assistance benefits.

DECISION

The Division was correct when it denied the Claimant's October 3, 2007 application for Interim Assistance benefits.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, the Claimant must send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

An appeal request must be sent within 15 days from the date of receipt of this decision. Filing an appeal with the Director could result in the reversal of this decision.


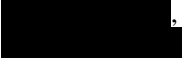
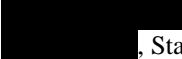
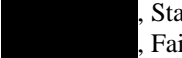

DATED this 15th day of August 2008.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 15th day of August 2008, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested

 Claimant Representative – Certified Mail, Return Receipt Requested.
, Director
, Policy & Program Development
, Staff Development & Training
, Fair Hearing Representative

Larry Pederson