

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)	
)	OAH No. 12-0488-APA
B Z)	Division No.
_____)	

FAIR HEARING DECISION

I. Introduction

B Z applied for Interim Assistance on June 29, 2012.¹ The Division of Public Assistance (Division) denied his application.² Mr. Z requested a hearing to challenge that denial.

Mr. Z's hearing was held on October 19, 2012. He represented himself and testified on his own behalf. Terri Gagne, Public Assistance Analyst with the Division, represented the Division. The hearing was recorded. The record was held open after the hearing for Mr. Z to submit additional medical records and for the Division to provide a written response to those records.

Based on the evidence in the record, Mr. Z is severely physically impaired and his physical impairments meet the 12-month durational requirements. However, his physical impairments do not meet or equal the Social Security disability listings. As a result, Mr. Z does not satisfy the Interim Assistance program's eligibility requirement that he be "likely to be found disabled by the Social Security Administration."³ The Division's decision denying his Interim Assistance application is AFFIRMED.

II. Facts

The following facts were established by a preponderance of the evidence.

Mr. Z was severely injured in June, 2010. His left leg was amputated below the knee and his left eye was damaged⁴. He has severe vision loss in his left eye. His right eye vision is correctable to normal limits (20/20).⁵ He experiences pain in his left leg stump; however, his most recent medical records (April, May, and July 2012) show the stump itself is well healed, with no signs of skin breakdown or ulceration.⁶ Mr. Z used his original prosthesis with a high

¹ Ex. 1.
² Ex. 2.138.
³ See 7 AAC 40.180(b)(1).
⁴ Ex. A, pp. 25 – 28.
⁵ Ex. A, pp. 1, 15.
⁶ Ex. A, pp. 63 – 64, 72 – 73.

degree of functionality, and a permanent prosthesis was ordered for him back in May 2012.⁷ His most recent medical records (April, May, and July 2012) show that he is able to walk and that he is “not limited” in the distance he “can walk before needing rest.”⁸

Mr. Z has received his new prosthetic leg. He testified that he is still adjusting to it, that it is causing sores on his stump, that his doctor has told him that he can only wear it two hours per day, and that he cannot place any weight on the prosthetic or walk with it due to the sores.⁹

The Division denied Mr. Z’s application due to a lack of current medical evidence.¹⁰ Mr. Z provided additional medical records after his October 19, 2012 hearing.¹¹ The Division reviewed those documents and concluded that his application should be denied because neither his vision loss nor his amputation met or equaled the applicable Social Security Administration (SSA) disability listing.¹²

III. Discussion

A. The Three Step Disability Determination Process

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”¹³ Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income benefits.¹⁴ Once an applicant is approved for federal Supplemental Security Benefits, he or she is then eligible to receive Adult Public Assistance benefits.¹⁵

Interim Assistance is a monthly payment in the amount of \$280 provided by the State to Adult Public Assistance applicants while they are waiting for the SSA to approve their Supplemental Security Income application.¹⁶

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”¹⁷ An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.¹⁸

⁷ Ex. A, pp. 68 – 71.

⁸ Ex. A, p. 71.

⁹ Z testimony.

¹⁰ Exs. 2.138 – 2.139.

¹¹ Ex. A, pp. 1 – 78.

¹² Exs. 14.0 – 14.1.

¹³ AS 47.25.430.

¹⁴ 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the Supplemental Security Income standards are not required to apply for Supplemental Security Income benefits. 7 AAC 40.170(a).

¹⁵ 7 AAC 40.030(a); 7 AAC 40.170(a).

¹⁶ 7 AAC 40.170(a) and (b); AS 47.25.455.

The SSA uses a five-step evaluation process in making its disability determinations.¹⁹ 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.²⁰

The Division uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.²¹ The first step looks at the applicant's current work activity. If the applicant is performing "substantial gainful activity," the applicant is not disabled.²² If the applicant is not performing "substantial gainful activity," it is necessary to proceed to step two.

The second step requires the evaluation of the severity and duration of the applicant's impairment. Medical evidence, which consists of "signs, symptoms, and laboratory findings, not only [the applicant's] statement of symptoms," is required to establish an applicant's impairment.²³ In order to be considered disabled, the impairment or combination of impairments must be severe²⁴ and must be expected to result in death or must have lasted or be expected to last at least 12 months.²⁵ If the impairment is not severe or does not meet the duration requirement, then the applicant is not disabled. If the impairment is severe and meets the duration requirements, then it is necessary to proceed to step three.

The third step requires the evaluation of whether the impairment meets or equals one of the disability listings adopted by the SSA. By regulation, the Division does not use the most current version of the SSA disability listings. Instead, it is required to use the "Social Security Administration disability criteria for the listings of impairments described in 20 C.F.R. 404, subpart P, appendix 1, as revised as of April 1, 2005, and adopted by reference."²⁶ If an applicant's impairment meets or equals one of the applicable SSA disability listings, the

¹⁷ 7 AAC 40.180(b)(1).

¹⁸ 2 AAC 64.290(e).

¹⁹ 20 C.F.R. § 416.920

²⁰ 20 C.F.R. § 416.920(a)(4).

²¹ *In re M. H.*, OAH Case No. 12-0688-APA. (Commissioner of Health and Social Services 2012)

<http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf> at 2.

²² 20 C.F.R. § 416.920(a)(4)(i).

²³ 20 C.F.R. § 416.908.

²⁴ A severe impairment is one that "significantly limits [a person's] physical or mental ability to do basic work activities." 20 C.F.R. § 416.920(c).

²⁵ 20 C.F.R. § 416.920(a)(4)(ii); 20 C.F.R. § 416.909.

²⁶ 7 AAC 40.180(b)(1)(B). The SSA disability listings are located at 20 C.F.R. Pt. 404, Subpart P, Appendix 1. The version of those listings in effect as of April 1, 2005 is located online at <http://www.gpo.gov/fdsys/pkg/CFR-2005-title20-vol2/pdf/CFR-2005-title20-vol2-part404-subpartP-app1.pdf>

applicant is disabled²⁷ and qualifies for Interim Assistance. If the applicant's impairment does not meet or equal one of the SSA listings, the applicant does not qualify for Interim Assistance.

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B. Application of the Three Step Process

The Division agrees that Mr. Z is not currently engaged in substantial gainful activity. This means that he satisfies step one of the three step disability process. The Division also agrees that his physical impairments, which are his vision impairment and his leg amputation, meet the severity and duration requirements. This satisfies step two of the three step disability process. In order to qualify for Interim Assistance, he must satisfy step three of the three step disability process, meeting or equaling the applicable SSA disability listing, for either his vision loss or his left leg amputation.

1. Vision Impairment

Mr. Z's severe vision loss in his left eye falls within the SSA disability listing for vision loss, "2.02 Impairment of visual acuity." In order for Mr. Z to meet or equal that listing, his vision in his better eye, which is his right eye, must be 20/200 or less.²⁹ His right eye vision, however, is correctable to normal limits (20/20).

Because Mr. Z's vision in his better eye, which is his right eye, is correctable to normal limits (20/20) he does not meet or equal the SSA disability listing for vision loss. As a result, he does not qualify for Interim Assistance benefits based upon his severe vision loss in his left eye.

2. Amputation.

Mr. Z's leg amputation falls within the specific listing for amputation of a lower extremity (listing 1.05(B)) and in the general SSA medical listing for musculoskeletal conditions (listing 1.00).³⁰ In order for Mr. Z to meet or medically equal the criteria set out in the listing he must have "stump complications resulting in medical inability to use a prosthetic device to ambulate effectively . . . which have lasted or are expected to last for at least 12 months."³¹

Mr. Z testified that he has sores on his stump that make him unable to walk with his new prosthetic leg. While there is no reason to disbelieve his testimony, in order for him to meet or

²⁷ 20 C.F.R. § 416.920(a)(4)(iii) and (d).

²⁸ *In re M. H.*, OAH Case No. 12-0688-APA. (Commissioner of Health and Social Services 2012) <http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf> at 2.

²⁹ See 20 C.F.R. § Pt 404, Subpart P, Appendix 1, § 2.02.

³⁰ See 20 C.F.R. § Pt 404, Subpart P, Appendix 1, §§ 1.00 and .05.

³¹ 20 C.F.R. § Pt 404, Subpart P, Appendix 1, §§ 1.05(B).

equal the listing, he would have to provide medical evidence showing that (a) he is unable to walk using his prosthetic leg (b) for a period which lasts, or can be expected to last for a 12 months. However, the most recent medical evidence in the record indicates that he was prescribed a new prosthetic leg, *i.e.* the medical evidence predates his new prosthetic leg.³² That medical evidence shows that he was able to walk using his old prosthetic leg.

There is no medical evidence in the record showing how Mr. Z is adjusting to his new prosthetic leg or how long it will take him to adjust to it. Assuming, for the sake of argument, that Mr. Z's testimony regarding his current inability to use his new prosthetic leg is supported by medical evidence, there is still no evidence in the record that would support a factual conclusion that he will be unable to walk using his new prosthetic leg for 12 months or longer. Consequently, he does not meet or equal the SSA disability listing for the musculoskeletal category and does not qualify for Interim Assistance benefits based upon his left leg amputation.

IV. Conclusion

Mr. Z did not meet his burden of proving that he is likely to be found disabled by the Social Security Administration due to either his vision loss or his amputated left leg. As a result, the Division's decision to deny his application for Interim Assistance benefits is AFFIRMED.

DATED this 26th day of November, 2012.

Signed

Lawrence A. Pederson
Administrative Law Judge

³² Mr. Z was given the opportunity to submit additional medical evidence after the October 19, 2012 hearing. He availed himself of that opportunity and provided new medical evidence on October 22, 2012. The most recent documents contained in that submission are dated July 24, 2012. (Ex. A, pp. 76 – 78).

Adoption

The undersigned, by delegation from 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 December, 2012.

By: Signed
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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