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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-286  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Interim Assistance on December 13, 2007. (Ex. 1) On March 21, 2008, the Division of Public Assistance (Division) sent him notice his application for benefits was denied. (Ex. 4.0) The Claimant requested a fair hearing contesting the denial on April 16, 2008. (Ex. 5.1) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on May 14, 2008. The Claimant attended the hearing and represented himself. [REDACTED], Public Assistance Analyst with the Division, attended in person to represent the Division. [REDACTED], a registered nurse with the Agency, attended telephonically and testified on behalf of the Division.

**ISSUE**

Was the Division correct to deny the Claimant's December 13, 2007 application for Interim Assistance benefits because the medical evidence did not support his disability claim?

**FINDINGS OF FACT**

1. The Claimant is currently [REDACTED] years old (birthdate [REDACTED]). (Ex. 2.2) On December 13, 2007, Claimant applied for Interim Assistance benefits. (Ex. 1). On March 17, 2008, [REDACTED], the Division's medical screener, informed the Division Claimant did not meet the durational

requirements for the program. (Ex. 2.1). Based on Ms. ██████'s report, the Division sent notice to the Claimant on March 21, 2008 that his claim was denied. (Ex. 4).

2. Late in the summer of 2007, Claimant began noticing increasing fatigue, malaise, and intermittent rare fever. (Ex. 2.20). By September he had lost approximately 30 pounds. He was hospitalized on September 12, 2007, and had a thoracotomy with decortication and chest tubes. He was discharged from the hospital on September 27, 2007. (Ex. 2.20 and 2.39).

3. The AD-2 Form, required by the Division but signed by the Claimant's physician on January 9, 2008, diagnosed Claimant with: "lumbago, COPD<sup>1</sup>, depression/major, tobaccoism, recent empyema ½ lung resection, 'PTSC'." The physician expects the Claimant to recover or be in remission from his condition within six months. (Ex. 2.3).<sup>2</sup>

4. Ms. ██████ testified at hearing that Claimant's condition did not meet the durational requirements for a determination of disability. (Ex. 2.1 & 2.159).

4. Claimant testified at hearing that he is suffering from a lung infection caused by Methicillin Resistant Staphylococcus Aureus (MRSA). Since his condition deteriorated, he has been having problems with equilibrium, dizziness, and forgetfulness. He also testified he is taking a substantial amount of medication.

### **PRINCIPLES OF LAW**

This case involves an application for Interim Assistance benefits. When an application is denied, the applicant has the burden of proof<sup>3</sup> by a preponderance of the evidence.<sup>4</sup>

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.

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 multistep process that must be followed in order to determine whether someone is disabled:

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<sup>1</sup> Chronic obstructive pulmonary disease.

<sup>2</sup> Included in the medical documentation is an AD-2 form completed on March 29, 2007. (Ex. 2.161). The corresponding determination from Ms. Grower is also in evidence. (Ex. 2.159). These documents will not be addressed in this decision, as the issues surrounding those documents are the subject of a previous decision, In the Matter of James Radford, issued on August 29, 2007, in case number 07-FH-849. That decision denied the Claimant's February 27, 2007 application for Interim Assistance benefits.

<sup>3</sup> "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).

<sup>4</sup> Amerada Hess Pipeline v. Alaska Public Utilities Comm'n, 711 P.2d 1170, 1179 n. 14 (Alaska 1986). Preponderance of the evidence is evidence which as a whole shows the fact sought to be proved is more probable than not.

1. Are you performing substantial gainful employment as defined by the applicable Social Security regulations?<sup>5</sup> If so, you are not disabled. 20 CFR 416.920(a)(4)(i). If you are not performing substantial gainful employment, then you must satisfy the next question.

2. Is your 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 your impairment. 20 CFR 416.908. If you have multiple impairments, the combined effect of all your impairments must be considered in determining whether you are severely impaired. 20 CFR 416.923. If your impairment is not severe, you are not disabled. 20 CFR 416.920(a)(4)(ii). If you are severely impaired, then you must satisfy the next question.

3. Has your 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 your severe impairment does not satisfy this duration requirement, you are not disabled. 20 CFR 416.920(a)(4)(ii). If your severe impairment satisfies this duration requirement, you must satisfy the next question.

4. Does your 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, you are disabled and no further inquiry is required. 20 CFR 416.920(a)(4)(iii). If your severe impairment does not meet or medically equal the listing of impairments, then you must satisfy the next question.

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

6. Are you capable of performing other work? Answering this question requires an evaluation of your residual functional capacity, your age, your education, and your previous work experience. If you are not capable of performing other work, you are disabled. 20 CFR 416.920(a)(4)(v).

### ANALYSIS

The issue to be considered is whether the Division was correct to deny the Claimant’s December 13, 2007 application for Interim Assistance benefits because the medical evidence did not support his disability claim. It is necessary to review the evidence in this case and decide, using the 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 is not eligible for Interim Assistance benefits. However, it is not always necessary to address each requirement in the multi-step analysis in the sequence set forth above when the Applicant has not met one of the

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<sup>5</sup> 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.

requirements. In this case, the Claimant clearly did not meet the durational requirement. Therefore, this decision will only address this step.

In order for a severe impairment to satisfy the Social Security disability criteria, it must have lasted for a continuous period of at least 12 months, or can 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 durational requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). There is no evidence the Claimant's condition has lasted or will last for a continuous period of at least 12 months. It appears, at the earliest, Claimant's symptoms began in late summer. (Ex. 2.20). The Claimant's medical provider has stated his condition is expected to be in remission within the next six months. (Ex. 2.3). Therefore, his condition does not satisfy the durational requirement and he is not disabled. Because he is not disabled, under the guidelines, he does not qualify for Interim Assistance.

### **CONCLUSIONS OF LAW**

Claimant is not eligible for Interim Assistance because his condition does not satisfy the durational requirements of the Social Security regulations.

The Division was therefore correct when it denied the Claimant's December 13, 2007 application for Interim Assistance benefits.

### **DECISION**

The Division was correct when it denied the Claimant's December 13, 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.


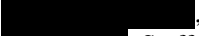
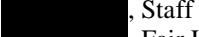

DATED this \_\_\_\_ day of June, 2008.

Patricia Huna-Jines  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this \_\_\_\_ day of June, 2008, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

, Director  
, Policy & Program Development  
, Staff Development & Training  
, Fair Hearing Representative

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Al Levitre  
Law Office Assistant I