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

In the Matter of )

██████████, )  
Claimant. )

OHA Case No. 08-FH-328

Division Case No. ██████████

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

██████████ (Claimant) applied for Interim Assistance on March 19, 2008. (Ex. 1.0) The Division of Public Assistance (Division) denied his application on May 6, 2008 because the Division found the Claimant was not disabled. (Ex. 2.3) The Claimant requested a fair hearing contesting the denial on May 12, 2008. (Ex. 3.0)

The hearing began on June 4, 2008 before Hearing Officer Patricia Huna-Jines. The hearing was then continued to July 9, 2008 before Hearing Officer Larry Pederson.

The Claimant was represented by ██████████, who appeared telephonically on both hearing dates. The Claimant and his wife, ██████████, both appeared in person on both hearing dates.

██████████, Public Assistance Analyst with the Division, attended in person on both hearing dates to represent the Division. ██████████, a registered nurse with the Division, attended telephonically and testified on behalf of the Division on July 9, 2008. The record was held open after the July 9, 2008 hearing for the Claimant to submit additional documentary evidence and for the Division to file its written response. The Claimant did not submit additional documentary evidence.

**ISSUE**

Was the Division correct to deny the Claimant's March 19, 2008 request for Interim Assistance benefits because the medical evidence allegedly did not support his disability claim?

## FINDINGS OF FACT

1. The Claimant is currently [REDACTED] years old (birthdate [REDACTED]). (Ex. 1) He has a 6<sup>th</sup> grade education, does not have a GED, and has difficulty reading and writing. (Claimant testimony)
2. The Claimant's work history consists primarily of physical labor. (Claimant testimony) The Claimant last worked in March 2007, as a security guard. (Claimant testimony)
3. Dr. [REDACTED] M.D., completed a Preliminary Examination for Interim Assistance form (AD #2) for the Claimant on March 18, 2008. That Preliminary Examination form diagnosed the Claimant with diabetes, hypertension (high blood pressure), and hyperlipidemia (high cholesterol). (Exs. 2.5 – 2.6) Dr. [REDACTED] indicated the Claimant was not expected to recover from these conditions, that they were "lifelong conditions – possibly controlled on meds." (Ex. 2.6) Dr. [REDACTED] also stated he had only seen the Claimant once, that he was unsure if the Claimant's conditions made him disabled, and that the Claimant should have his disability exam performed by his other doctor. *Id.*
4. The Claimant has been diagnosed with Type II Diabetes, which as of May 27, 2008, was uncontrolled. (Ex. A, p. 71) He is prescribed medication (Byetta) for his diabetes. (Ex. A, p. 70)
5. The Claimant has been diagnosed with hypertension. (Ex. A, p. 18) He is prescribed medication (Diovan) for his hypertension. (Ex. A, p. 19) As of May 27, 2008, the Claimant's blood pressure was 120/86, which was a decrease from his April 9, 2008 blood pressure of 140/98. (Ex. A, pp. 71, 74) His May 27, 2008 blood pressure reading was slightly above normal limits. (Ex. A, p. 71)
6. The Claimant has been diagnosed with hyperlipidemia. (Ex. A, p. 18) He is prescribed medication (Lipitor) for his hyperlipidemia. (Ex. A, p. 19) As of May 27, 2008, Dr. [REDACTED] found that his cholesterol levels, under medication, was low. (Ex. A, p. 70)
7. The record contains several recent medical reports, as follows:
  - a. The Claimant was examined on March 10, 2008 by Dr. [REDACTED]. Dr. [REDACTED] report indicates the Claimant has feeling in both feet, walks without a limp, and "moves his lower extremities symmetrically." (Ex. A, p. 81) During the March 10, 2008 examination, the Claimant denied "current fever, chills, nausea, vomiting, diarrhea, chest pain, shortness of breath, cough, black or bloody stools. He reports urinating okay. He denied any rash. He denies any numbness of his feet. He denies any foot ulcerations." (Ex. A, p. 80)
  - b. The Claimant was examined on March 26, 2008 by Dr. [REDACTED] M.D. Dr. [REDACTED] report found eye pain and recent weight change, but did not indicate the presence of other symptoms. (Ex. A, pp. 76 – 79)
  - c. The Claimant was examined by Dr. [REDACTED] on April 9, 2008. During that examination, the Claimant informed Dr. [REDACTED] about one day when his blood sugar levels were low, which the Claimant attributed to not having eaten the whole day. (Ex. A, p. 73) The

Claimant denied “any fever, chills, nausea, vomiting, diarrhea, chest pain, or shortness of breath. He is otherwise feeling well.” *Id.*

- d. The Claimant was examined by Dr. [REDACTED] on May 27, 2008. During that examination, the Claimant informed Dr. [REDACTED] about one low blood sugar episode. (Ex. A, p. 70) The Claimant also reported a weight gain, which he attributed to less exercise, and some difficulty sleeping. *Id.* During that examination, the Claimant denied “any other significant problems.” *Id.* Dr. [REDACTED] further noted that the Claimant walked without a limp. (Ex. A, p. 71)

8. In addition to the three conditions listed above (diabetes, hypertension, and hyperlipidemia), the Claimant also complained of a vision impairment. The Claimant’s most recent eye examination was conducted on June 3, 2008. (Ex. A, p. 1) The Optometrist notes that the Claimant has suspect glaucoma but has 20/20 vision in both eyes. (Ex. B) The record contains no medical or optometric documents showing the actual presence of glaucoma, other than Dr. [REDACTED] March 26, 2008 examination notes which lists “Glaucoma” in the Assessment portion and states the Claimant is to “[c]ontinue glaucoma treatment with the ophthalmologist as previous.” (Ex. A, pp. 78 - 79)

9. The Claimant testified about his physical condition. He stated he experienced fatigue and that he had to take afternoon naps. He said he experienced leg pain and could only walk two to three blocks. He also testified he sometimes could not sit for thirty minutes without having to get up and move, and that he could only stand for approximately 15 minutes.

10. The Claimant’s wife testified about her observations of the Claimant’s condition. She stated he had significant memory problems. She said he could only walk about two blocks before he had problems with his legs, including foot pain or his feet swelling.

11. [REDACTED] is a registered nurse employed by the Division, who reviews medical information for state Interim Assistance determinations. [REDACTED] testified about the Claimant’s various health conditions. She stated the Claimant’s hypertension and hyperlipidemia were controlled. She thought the Claimant’s diabetes was sporadically controlled. She did not find the Claimant experienced any side effects from his diabetes. She stated the Claimant did not have any visual impairment. She did not find any medical evidence that the Claimant’s ability to function was limited. She stated the Claimant was not severely impaired. She opined the Claimant’s was not disabled.

### **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>1</sup> by a preponderance of the evidence.<sup>2</sup>

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<sup>1</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>2</sup> Preponderance of the evidence is defined as follows:

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 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? 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

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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 (5<sup>th</sup> Ed. 1979)

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).

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

The Preliminary Examination form completed by Dr. [REDACTED] and the four medical examinations performed by Drs. [REDACTED] and [REDACTED] in 2008 show the Claimant has three chronic medical conditions, hypertension, hyperlipidemia, and diabetes. (Exs. 2.6 – 2.6; A, pp. 70 – 84) The Claimant is also suspected of having glaucoma. (Ex. A, p. 1)

A review of the evidence shows there is no medical evidence the Claimant's ability to perform basic work activities is significantly limited by any of his medically documented impairments. Dr. [REDACTED] March 18, 2008 Preliminary Examination reports states that he is "unsure if [the Claimant] is disabled"

by his medical conditions. (Ex. 2.6) The four 2008 medical examination reports completed by Drs. [REDACTED] and [REDACTED] do not show the Claimant as having any functional limitations. There is no indication in the medical records of fatigue, or any limitations with his physical or mental functioning. The Claimant June 2008 eye examination shows that he has no vision problems. (Exs. A, p. 1; B)

The Claimant and his wife testified about the Claimant experiencing physical and memory limitations. This is not medical evidence. Medical evidence is required to establish an applicant's impairment. 20 CFR 416.908. In fact, the Claimant's testimony about his walking limitations and his wife's testimony about his leg pain is contradicted by his 2008 medical examinations that reflect he did not complain, as recently as May 27, 2008, of any physical problems other than trouble sleeping. (Ex. A, p. 71) Similarly, there is no indication in the Claimant's medical records of any memory problems.

In summary, the Claimant experiences three chronic conditions, hypertension, hyperlipidemia and diabetes. His hypertension and hyperlipidemia are medically controlled. His diabetes is not. However, there was not enough medical evidence to support a finding the Claimant's impairments significantly limited his ability to perform basic work activities. Because the Claimant did not establish a significant limitation on his ability to perform basic work activities, he did not prove he was severely impaired. The Claimant had the burden of proof in this case and did not meet it. As a result, the Claimant is not disabled by Social Security Standards.

The fact the Claimant is not disabled by Social Security standards means he does not satisfy the disability requirement for Interim Assistance. The agency was therefore correct when it denied the Claimant's March 19, 2008 application for Interim Assistance.

### **CONCLUSIONS OF LAW**

1. There is no medical evidence in this case, the Claimant and his wife's testimony notwithstanding, that demonstrates the Claimant was severely impaired, i.e. limited in his ability to perform basic work activities.
2. The Claimant did not meet his burden of proof to establish that his medical impairments were severe. The Claimant is therefore not disabled by Social Security standards and does not satisfy the disability requirement for Interim Assistance eligibility.

### **DECISION**

The Division was correct when it denied the Claimant's March 19, 2008 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 3rd day of October 2008.

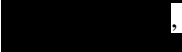
Larry Pederson  
Hearing Authority

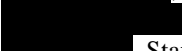
CERTIFICATE OF SERVICE

I certify that on this 3<sup>rd</sup> day of October 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

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Al Levitre