

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

In the Matter of	)	
	)	OAH No. 12-0586-APA
K S	)	Former OHA Case No.
_____	)	DPA Case No.

**DECISION**

**I. Introduction**

The issue in this case is whether K S is disabled for purposes of Alaska's Interim Assistance program. The Division of Public Assistance (DPA or Division) denied Mr. S's application for Interim Assistance benefits on March 14, 2012. Based on the medical records submitted and on the testimony presented at the hearing, the Division's determination denying Mr. S's application for Interim Assistance benefits is upheld.

**II. Facts**

*A. Procedural History*

After DPA denied his application, Mr. S requested a hearing on March 19, 2012 to contest that decision. A hearing was held on June 20, 2012. Mr. S appeared and represented himself. The Division was represented by Public Assistance Analyst Jeff Miller. At the conclusion of that hearing, Mr. S was given time to submit additional medical records which would be considered at a supplemental hearing.

The supplemental hearing was held on July 31, 2012. Mr. S indicated that he had faxed the medical records to the Division, but the Division indicated that it had not received them. Mr. S was given additional time to resubmit those records, and the Division was given time to respond to those records in writing. Mr. S's records were received on August 3, 2012 and the Division's response was received on August 24, 2012, at which time the record was closed.

*B. Mr. S's Condition*

Mr. S was diagnosed with rheumatoid arthritis in November of 2009, when he was 21 years old.<sup>1</sup> He applied for Interim Assistance on February 10, 2012.<sup>2</sup> In Mr. S's Disability and Vocational Report, submitted as part of his application, he states that his most recent

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<sup>1</sup> Exhibit A 6.

<sup>2</sup> Exhibit 2.

employment was in landscaping and snow removal from April 2011 through November 2011.<sup>3</sup> Prior to that, he worked at a ski resort in various capacities from March of 2009 through December of 2010.<sup>4</sup> He was previously in the army where he was trained in vehicle maintenance.<sup>5</sup>

In early February, 2012, Mr. S developed cellulitis<sup>6</sup> and was hospitalized.<sup>7</sup> Because of that infection, he had to stop taking his arthritis medication for a period of time. He was able to resume his medication in February and was still taking that medication as of the June 20, 2012 hearing date.<sup>8</sup>

### III. Discussion

Interim Assistance is a benefit available to individuals while they are waiting for the Social Security Administration to approve their application for Supplemental Security Income.<sup>9</sup> Among other requirements, to receive Interim Assistance an applicant must be “likely to be found disabled by the Social Security Administration.”<sup>10</sup> As the person seeking to overturn the Division’s decision, Mr. S has the burden of proving that he is likely to be found disabled by the Social Security Administration.<sup>11</sup> Under Alaska’s regulation, this determination is made by answering the following questions:

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."<sup>[12]</sup>

In this case, the Division agreed that Mr. S was not currently employed, and that he had a severe impairment as defined by the Social Security Administration. However, the Division argued that his impairment had not lasted, and was not likely to last for twelve months.

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<sup>3</sup> Exhibit 3.12.

<sup>4</sup> Exhibit 3.12.

<sup>5</sup> Testimony of Mr. S.

<sup>6</sup> Cellulitis is a type of skin infection.

<sup>7</sup> Exhibit 3.2.

<sup>8</sup> Testimony of Mr. S.

<sup>9</sup> 7 AAC 40.170(b); 7 AAC 40.375.

<sup>10</sup> 7 AAC 40.180(b)(1).

<sup>11</sup> 2 AAC 64.290(e).

<sup>12</sup> *In re M.H.*, OAH Case No. 12-0688-APA (Commissioner of Health and Social Services 2012), page 2.

The durational requirement of 12 months comes from federal law which states:

an individual shall be considered to be disabled for purposes of this subchapter if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.<sup>[13]</sup>

Mr. S was able to engage in substantial gainful employment in November of 2011.<sup>14</sup> In February of 2012, after his cellulitis infection, his physician wrote:

Patient was previously doing well on medications for RA however following an infection of his hand and arm his medications had to be discontinued and the rheumatoid arthritis flared. I expect full remission eventually when appropriate medications are able to be restarted.<sup>[15]</sup>

Mr. S's physician expected his symptoms to improve within six months.<sup>16</sup> As long as symptoms improved before November of 2012, his impairment would not have prevented Mr. S from working for a continuous period of 12 months.

Mr. S testified credibly that he has good days and bad days, and that in order to do the landscaping and snow removal work, he had to push himself hard because of his symptoms. There is no question that Mr. S has rheumatoid arthritis and that it affects his ability to work to varying degrees depending on the extent of his symptoms each day. However, he has not met his burden of proving that has been or will be unable to work for a continuous period of at least 12 months.<sup>17</sup>

#### **IV. Conclusion**

Mr. S has a severe impairment, but that impairment has not prevented him, and is not expected to prevent him, from performing any work for a continuous period of 12 months. Accordingly, Mr. S is not eligible for Interim Assistance benefits, and the Division's determination is therefore affirmed.

Dated this 21st day of September, 2012.

*Signed* \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

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<sup>13</sup> 42 U.S.C. §1382c(a)(3)(A) (adopted by reference in 7 AAC 40.170).

<sup>14</sup> Exhibit 3.12; Testimony of Mr. S.

<sup>15</sup> Exhibit 3.9 (AD 2 form dated February 27, 2012 submitted as part of Mr. S's application).

<sup>16</sup> *Id.*

<sup>17</sup> Mr. S may reapply for Interim Assistance at any time if his condition worsens.

## 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 2<sup>nd</sup> day of October, 2012.

By: Signed \_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge

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