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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-594  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
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**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Interim Assistance on February 12, 2008. (Ex. 1.0) The Division of Public Assistance (Division) sent the Claimant notices, on June 4 and June 9, 2008, that her application was denied because the Division found the Claimant was not disabled. (Exs. 3, 4.0) The Claimant requested a fair hearing contesting the denial on June 9, 2008. (Ex. 4.1)

The hearing was held on September 16<sup>1</sup> and October 14, 2008. The Claimant appeared telephonically and represented herself. Her daughter [REDACTED] attended the October 14, 2008 portion of the hearing and testified on the Claimant's behalf.

[REDACTED], Public Assistance Analyst with the Division, attended in person on both hearing dates to represent and testify on behalf of the Division.

**ISSUE**

Was the Division correct to deny the Claimant's February 12, 2008 request for Interim Assistance benefits because the medical evidence allegedly did not support her disability claim?

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<sup>1</sup> This case was due to be heard and a decision issued within 90 days of the date of the Claimant's hearing request, i.e. by September 7, 2008. *See* 7 AAC 49.180. However, the Division did not inform this Office of the Claimant's hearing request and schedule the hearing itself until August 27, 2008.

## FINDINGS OF FACT

1. The Claimant is currently [REDACTED] years old (birth date [REDACTED]). (Ex. 1) She has a GED. (Claimant testimony)
2. The Claimant's work history consists primarily of physical labor, housekeeping and cannery work. (Claimant testimony) The Claimant last worked in 1997 or 1998 as a housekeeper at a bed and breakfast. (Claimant testimony) After 1998, the Claimant stayed at home and raised her minor son. (Claimant testimony)
3. Dr. [REDACTED], D.O., completed a Preliminary Examination for Interim Assistance form (AD #2) for the Claimant on February 27, 2008. This form diagnosed the Claimant with bilateral shoulder derangement with impingement syndrome, carpal tunnel syndrome, and very early degenerative joint disease. (Ex. 2.13) Dr. [REDACTED] indicated, on the form that the Claimant's expected recovery time was 12 months or longer, stating that she hoped the Claimant's upcoming surgery worked: "[i]f not, she will be a permanent cripple in the arms." *Id.* The February 27, 2008 Preliminary Examination report also indicated the Claimant was expected to have permanent back problems. *Id.*
4. Dr. [REDACTED], D.O., completed a second Preliminary Examination for Interim Assistance form (AD #2) for the Claimant on June 9, 2008. This form diagnosed the Claimant with left shoulder impingement syndrome, and severe A-C arthritis of the left shoulder. (Ex. 2.3) The form also indicated the Claimant had left shoulder surgery, that she would complete her physical therapy after August 2008, that she was expected to have right shoulder surgery, and her expected recovery time was 6 months. *Id.*
5. The Claimant's medical records show the following:
  - a. The Claimant has a long history of back and shoulder pain. She met with her physician for back and shoulder pain as early as 2001. (Exs. 2.86 – 2.89) She was then diagnosed with fibromyalgia. *Id.*
  - b. The Claimant had an MRI of her cervical spine that showed, as of May 2001, "multiple level disk bulges and disk protrusion." (Ex. 2.87) She also had a left shoulder MRI performed at the same time that showed "evidence of a partial thickness or tendonitis of the supraspinal tendon." *Id.*
  - c. In January 2003, the Claimant met with her physician and complained of "pain in her right shoulder that has been going on for many years. She has decreased strength which is not new." (Ex. 2.79)
  - d. On August 15, 2007, the Claimant had two spinal X Rays performed. The X Rays showed the Claimant had degenerative disc disease at C5 – C6 and L5- S1. (Exs. 2.133 – 2.134)

- e. On August 15, 2007, the Claimant had an X Ray of her left shoulder performed that showed the Claimant had a “MILD DEGENERATIVE CHANGE AT THE ACROMIOCLAVICULAR JOINT.” (Ex. 2.135)
  - f. On September 10, 2007, the Claimant had several spinal MRIs performed. The lumbosacral spine MRI showed a “BILATERAL PARS DEFECT OF L5 WITH GRADE I ANTERIOR SUBLUXATION OF L5 ON S1 AND MILD BILATERAL FORAMINAL STENOSIS.” (Ex. 2.31) The cervical spine MRI showed “CENTRAL DISC BULGING AT C2-C3 WITH MILD CENTRAL STENOSIS AT THOSE LEVELS. NO FORAMINAL STENOSIS. MILD DISC SPACE NARROWING AT C6 – C7 WITH REVERSAL OF THE CERVICAL CURVE AT THAT LEVEL.” (Ex. 2.132)
  - g. On September 11, 2007, the Claimant’s physician’s notes indicate concluded the Claimant had “mild bulging but no significant foraminal encroachment or severe cervical stenosis,” that her “lumbar spine MRI does not also show much in the way of nerve root impingement or foraminal stenosis but does show a mild pars defect,” and that she had “some mild impingement type symptoms” with both shoulders. (Ex. 2.62) The physician recommended the Claimant “talk to physical therapy for discussion of activities that she can do to treat her discomfort, work on range of motion and strengthening.” *Id.*
  - h. On December 20, 2007, the Claimant had MRIs performed on both shoulders. The MRIs showed the Claimant had acromioclavicular degenerative changes in both shoulders. (Exs. 2.47 – 2.48)
  - i. On March 5, 2008, the Claimant elected to have left shoulder surgery, despite her physician’s notes that “I think she has (sic) not going to notice a dramatic improvement with surgery and she seems [to] understand this but she says the pain has been bothersome enough that she would like to do something with his (sic).” (Ex. 2.61)
  - j. The Claimant had left shoulder surgery performed on March 6, 2008. (Ex. 2.46)
  - k. On April 8, 2008, the Claimant’s left shoulder surgery was well healed, however, the Claimant was “extremely stiff” and was referred to physical therapy. (Ex. 2.60)
6. The Claimant testified about her physical condition as follows:
- a. She experiences lower back pain.
  - b. Her balance is off.
  - c. She was prescribed a cane but cannot use it because of problems with her shoulders and her hand grip.

- d. She can sit for only about 10 minutes due to pain. She has to lie down frequently.
- e. She has difficulty bathing, standing, cooking, cleaning, and doing laundry.
- f. She has difficulty cutting up her food.
- g. She frequently drops items.
- h. She has severe problems sleeping and only has about 2 hours interrupted sleep per night.
- i. The Claimant was supposed to have surgery performed on her right shoulder. She is currently not planning on having that surgery.

7. The Claimant's daughter also testified about her mother's condition. She spoke about her mother being unable to do housework. She said her mother drops items, and is unable to such things as pick up her grandchild.

8. Ms. [REDACTED] is a registered nurse employed by the Division, who reviews medical information for state Interim Assistance determinations. Ms. [REDACTED] did not testify. Her evaluation submitted in email message format is very brief and indicated she originally denied the Claimant's Interim Assistance application because the Claimant could engage in sedentary work.<sup>2</sup> Subsequently she denied the Claimant's Interim Assistance application because the Claimant's condition was not expected to last for 12 months.<sup>3</sup> (Exs. 2.1, 2.11)

### **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>4</sup> by a preponderance of the evidence.<sup>5</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.

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<sup>2</sup> [REDACTED]'s note states: "Denied based on the client's AD2, which indicated the client would improve, recover, or go into remission within 12 months of time. Consequently the client does not meet the durational requirement."(Ex. 2.1)

<sup>3</sup> Ms. [REDACTED]'s note states: "[D]enied based on the medical review. [W]hile the clients radiology show evidence of disease the physical examination demonstrates the client has the likely ability to engage in sedentary work." (Ex. 2.11)

<sup>4</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>5</sup> 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 (5<sup>th</sup> 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? 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).

It is an applicant's responsibility to "provide medical evidence showing that [she] [has] an impairment(s) and how severe it is." 20 CFR 416.912(c).

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. 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. 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).

There is substantial medical evidence in the record showing that the Claimant has degenerative disk disease, and that she has remaining problems with both her shoulders. Although the medical records do not provide that the Claimant's work abilities are compromised by these conditions, it is a reasonable inference that these conditions restrict the Claimant's ability to perform a full range of various types of work activities, i.e. that her medical conditions "significantly limit [her] physical . . . ability to do basic work activities." 20 CFR 416.920(c). As such, the Claimant experiences severe physical impairments as defined by the Social Security disability regulations.

The next step is to decide whether or not the Claimant's severe physical impairments have lasted or can be expected to last for a continuous period of at least 12 months. 20 CFR 416.909. Although the Division argued the Claimant's severe physical impairments did not satisfy the durational requirement, the medical records show the Claimant began discussing these impairments with her doctors as early as 2001. (Exs. 2.86 – 2.89) This is an almost seven year time span, that well exceeds the 12 month

minimum duration 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 Claimant has medically documented degenerative disk disease and bilateral shoulder impingement syndrome. These are classified under the Social Security 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). While the Claimant testified about her pain, and its effects on her day to day functioning, there is no medical evidence in the record that establishes "an extreme limitation of the ability to walk" or "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 severe physical impairments do 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 physical impairments prevent her from doing her previous relevant work.

The Claimant's previous relevant work consisted of housekeeping, which is physical work. The Claimant's testimony and her daughter's testimony, taken at face value, establish the Claimant's inability to perform any housekeeping work. However, there is absolutely no medical evidence in the record that shows the Claimant's severe physical impairments make her unable to perform housekeeping work. Medical evidence is required to establish an applicant's impairment. 20 CFR 416.908; 20 CFR 416.912(c). The medical evidence does not demonstrate any limitation upon the Claimant's functioning. The Claimant has the burden of proof. She has not met it because of the absence of medical evidence supporting that she is unable to perform her previous relevant work as a housekeeper.

Because the Claimant is required to prove she is unable to perform her previous relevant work, and because she has not proven it, the Claimant is not disabled according to the Social Security disability rules. 20 CFR 416.920(a)(4)(iv). The Division was therefore correct when it denied her application for Interim Assistance.

### **CONCLUSIONS OF LAW**

1. There is no medical evidence in this case, the Claimant and her daughter's testimony notwithstanding, that demonstrates the Claimant is unable to perform her previous relevant work as a housekeeper.

2. The Claimant did not meet her burden of proof to establish she was unable to perform her previous relevant work as a housekeeper. 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 February 12, 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.


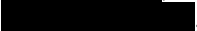
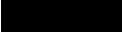
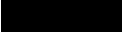
DATED this 24th day of October 2008.

Larry Pederson  
Hearing Authority

### CERTIFICATE OF SERVICE

I certify that on this 24th day of October 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