

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Phone: (907) 334-2239
Fax: (907) 334-2285

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

In the Matter of)
)
 [REDACTED],) OHA Case No. 08-FH-873
)
 Claimant.) DPA Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Interim Assistance on or about September 30, 2008 (Ex. 2.0001). The Division of Public Assistance (DPA or Division) denied her application on November 21, 2008 (Ex. 2.0001). The Claimant requested a fair hearing contesting the denial on or about December 4, 2008 (Ex. 3). This office has jurisdiction to decide this case pursuant to 7 AAC 49.010.

Hearings were held on February 24, 2009 and March 31, 2009 before Hearing Officer Claire Steffens.¹ The Claimant appeared by telephone at both hearings, represented herself, and testified on her own behalf. [REDACTED] appeared by telephone at the hearing of February 24, 2009 and testified on the Claimant's behalf. Public Assistance Analyst [REDACTED] appeared at the hearing of February 24, 2009 to represent and testify on behalf of the Division. Public Assistance Analyst [REDACTED] appeared at the hearing of March 31, 2009 to represent and testify on behalf of the Division. [REDACTED], a registered nurse (R.N.) employed by the Division, testified telephonically on behalf of the Division at the hearing of March 31, 2009.

At the close of the hearing of March 31, 2009 Hearing Officer Steffens left the record open solely for the submission of an affidavit by [REDACTED]. This affidavit was to be submitted or

¹ Following the hearing this case was reassigned to Hearing Officer Jay Durych. He reviewed the digital recording of the hearing and the case file prior to preparing and issuing this decision.

postmarked by April 2, 2009. Any DPA response was to be filed by April 10, 2009. Mr. [REDACTED] filed his affidavit on April 1, 2009. DPA submitted its response on April 1, 2009.

On May 21, 2009 this Office received 2 pages of additional exhibits from the Claimant. On May 22, 2009 the Division objected to this evidence as untimely. Because the Claimant's May 22, 2009 filing was submitted after the filing deadline, it was not considered in the preparation of this decision.

ISSUE

Was the Division correct to deny the Claimant's September 30, 2008 application for Interim Assistance Benefits on or about November 21, 2008, based on the assertion that the Claimant did not meet the Interim Assistance Program's disability requirements?

FINDINGS OF FACT ²

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

1. The Claimant was born on [REDACTED], 1956 (Ex. 2.0002) and was [REDACTED] years old at the time of the hearings held in this case. She has a GED, graduated from cosmetology school, and worked many years as a hair stylist (Ex. 2.0009).

2. The Claimant asserts five (5) impairments in this case (Claimant hearing testimony, Exs. B.2 – B.3). These are diabetes, hepatitis C, hypertension, hypothyroidism, and osteoarthritis (with chronic pain syndrome). *Id.* The Claimant testified that the osteoarthritis affects her hands, hips, and knees. *Id.* There was other lay testimony that the osteoarthritis also affects the Claimant's elbows and back ([REDACTED] affidavit – Ex. C.1).

3. The Social Security Administration (SSA) Impairment Listing for each of the impairments asserted by the Claimant are as follows (see 20 CFR Part 404, Subpart P, Appendix 1):

Diabetes – No. 9.08;

Hepatitis C - No. 5.05.

Hypertension - No. 4.00H.

Hypothyroidism - No. 9.02.

Osteoarthritis of the hands, elbows, back, hips, and/or knees - No. 1.00 et. seq.

4. The Claimant has had Hepatitis C with fibrosis since 2004 (Exs. 2.0039, 2.0198).

² All of the medical reports in the record (approximately 336 pages total) were reviewed and considered during the preparation of this decision. However, some of the medical records were cumulative, and some were less relevant than others. Accordingly, not every exhibit is specifically referenced in this decision. Abbreviations used in the medical reports have been spelled out in this decision for ease of understanding.

5. A radiological study of the Claimant's hands and wrists, dated January 28, 2005, showed "possible rheumatoid disease" with "minimal changes" (Ex. 2.0024).
6. A radiological study of the Claimant's left hip, dated March 6, 2006, did not indicate any abnormality (Ex. 2.0024).
7. An MRI of the Claimant's lumbar spine, dated April 20, 2006, showed degenerative changes of the end plates of the L3 and L4 vertebral bodies (Ex. 2.0024).
8. An echogram of the Claimant's abdomen, dated July 12, 2006, showed a stable hypoechoic pancreatic mass (Ex. 2.0024).
9. A CT of the Claimant's thorax, taken on September 22, 2006, showed no pulmonary mass or mediastinal or hilar adenopathy (Ex. 2.0024).
10. An abdominal ultrasound was performed on the Claimant on June 29, 2007 (Ex. 2.0045). The radiologist's findings stated in relevant part as follows:

The liver appears normal The right kidney shows no abnormality The gallbladder appears normal with no stones. Again noted is the small hypoechoic pancreatic mass which is stable from July 12, 2006. There does appear to be splenomagaly The left kidney shows no discrete abnormality

11. A radiological study of the Claimant's lumbosacral spine was performed on August 22, 2007 (Ex. 2.0044). The radiologist's findings stated in relevant part as follows:

There is mild narrowing and hypertrophic spurring at the L2-3 disc. The pedicles and grossly the sacroiliac and acetabular joints appear intact. Subchondral geodes are incidentally noted in the left acetabular roof Impression: Mild degenerative disc disease at L2-3.

12. An abdominal ultrasound was performed on the Claimant on December 5, 2007 (Exs. 2.0042 – 2.0043). The radiologist's findings stated in relevant part as follows:

Ultrasound evaluation of the liver demonstrates no intra- or extrahepatic biliary ductal dilation. Flow within the main portal vein is towards the liver as expected. The gallbladder was distended with no evidence for cholelithiasis or cholecystitis.

The kidneys are within normal limits.

Splenomagaly is again noted [and] appears slightly more prominent than on previous examination

The mass within the head of the pancreas is again noted . . . most likely unchanged as compared to prior examination.

* * * * *

There is no aneurismal dilation of the abdominal aorta

13. A hepatitis chart review by hepatologist [REDACTED], M.D. dated December 5, 2007 (Exs. 2.0035 – 2.0036) states in relevant part as follows:

[REDACTED] year old woman with hepatitis C and advanced fibrosis who failed treatment Hepatitis C with advanced disease. Liver biopsy in 2004 showed marked bridging fibrosis. She probably has cirrhosis. However, her liver synthetic function is good Splenomegaly secondary to advanced liver disease. No specific treatment indicated (or possible) Continues to be at increased risk for HCC

14. The Claimant was diagnosed with hyperthyroidism on January 25, 2008 (Ex. 2.0177).

15. The Claimant was diagnosed with bursitis of both hips on March 17, 2008 (Ex. 2.0162).

16. An abdominal ultrasound was performed on the Claimant on June 9, 2008 (Ex. 2.0039). The radiologist's findings stated in relevant part as follows:

Impression . . . Normal sonographic appearance of the liver, gallbladder and pancreas without evidence of biliary dilation. There is redemonstration of the prominent tissue from the inferior aspect of the caudate lobe [of the liver] but this appears to be a variation of anatomy and not any abnormal tissue. No ascites seen.

17. An assessment by internist [REDACTED], M.D. dated June 12, 2008 (Exs. 2.0032 – 2.0034), following an accidental overdose by the Claimant, states in relevant part as follows:

. . . . [The Claimant] . . . was . . . unresponsive after taking about 8 tablets of soma yesterday afternoon Assessment: (1) toxic encephalopathy; (2) soma overdose; (3) respiratory failure; (4) prolonged QTC; (5) polysubstance abuse; (6) hepatitis C virus carrier status; (7) essential mixed cryoglobulinemia / vasculitic syndrome; (8) obesity; (9) hypertension; (10) active injection drug abuse

18. As of June 13, 2008 the Claimant worked in the home caring for her family, which consists of her boyfriend and their six children (Ex. 2.0009).

19. As of June 13, 2008 the Claimant's current prescription medications were albuterol, atenolol, estrogen, fluoxetine, pp guaifenesin/codeine, hydrochlorothiazide, hydrocodone, levothyroxine, and potassium chloride (Ex. 2.0008).

20. The Claimant was diagnosed with hypoglycemia on September 5, 2008 (Ex. 2.0100).

21. The Claimant was diagnosed with diabetes mellitus on September 10, 2008 (Ex. 2.0094).

22. The Claimant has chronic pain (Ex. 2.0252). However, her complaints of pain have been reported to be "out of proportion to her clinical findings" (Ex. 2.0252). She is maintenance opiate ineligible (Ex. 2.0253).

23. The Claimant applied for Interim Assistance on or about September 30, 2008 (Ex. 2.0001).

24. A *Preliminary Examination for Interim Assistance* (Form AD#2) prepared by treating physician [REDACTED], M.D. dated October 15, 2008 (Exs. 2.0004 – 2.0005) states that the Claimant's diagnosis is diabetes mellitus and chronic hypertension and that the Claimant is not expected to recover from these conditions.

25. An initial *DPA Interim Assistance Medical Review Denial Form* prepared by [REDACTED], R.N. and dated November 19, 2008 (Ex. 2.0003) states in relevant part as follows:

Denied based on the medical review which revealed that the client's main problem appears to be an overdose of medication and possible substance abuse. We reviewed records from [the Alaska Native Medical Center and Valley Primary Care]. The [Claimant's] records failed to substantiate the allegation that she is unable to engage in any and all types of work. She does have hepatitis C but there is no record of her experiencing bleeding esophageal varices or abdominal ascites. The two diagnoses listed on the AD-2 are chronic and treatable and do not meet the criteria as there are no co-morbidities listed in the notes. Consequently it appeared likely that [the Claimant] could engage in some type of work.

26. On November 21, 2008 the Division mailed a notice to the Claimant advising that her application for Interim Assistance had been denied (Ex. 2.0001). The notice stated in relevant part:

Our review of your doctor's preliminary medical examination indicates you do not meet the . . . disability requirements This action is supported by [APA] Manual sections 410-8 and 426-2 and 7 AAC 40.070 and 7 AAC 40.170

27. A second *DPA Interim Assistance Medical Review Denial Form* prepared by [REDACTED], R.N. and dated December 17, 2008 (Ex. 2.0003A) states in relevant part as follows:

This is the second review for this client whose AD-2 indicated that her only problems were diabetes mellitus and chronic hypertension. We reviewed medical records from [the Alaska Native Medical Center and Valley Primary Care]. The medical evidence did not contain information that the [Claimant's] chronic conditions were associated with complications. In fact, the notes indicated that the [Claimant's] hypertension was controlled [The Claimant's] conditions are treatable and do not meet the criteria Consequently, it appeared likely that [the Claimant] could engage in some type of work.

28. A third *DPA Interim Assistance Medical Review Denial Form* prepared by [REDACTED], R.N. and dated January 8, 2009 (Ex. 2.0003D) states in relevant part as follows:

Denied based on the medical review We reviewed records from [Alaska Native Medical Center] and Valley Primary Care. [These] records presented an extensive history of pain and multiple other chronic complaints which were described as out of proportion to clinical symptoms. Many of the [Claimant's] complaints are treatable.

. . . The [Claimant's degenerative disc disease] is described in the radiology study as mild. Consequently, it would appear likely that [the Claimant] could engage in some type of work activity.

29. A second *Preliminary Examination for Interim Assistance* (Form AD#2) prepared by treating physician [REDACTED], M.D., this one dated January 30, 2009 (Exs. A.2 – A.3), states that the Claimant's diagnosis is "new onset diabetes, hypertension, [and] hypothyroidism," that the Claimant has chronic pain syndrome, and that the Claimant is not expected to recover from these conditions.

30. A third *Preliminary Examination for Interim Assistance* (Form AD#2) prepared by treating physician [REDACTED], M.D., this one dated January 30, 2009 (Exs. B.2 – B.3), states that the Claimant's diagnosis is "new onset diabetes, hypertension, hypothyroidism, hepatitis C – chronic, [and] osteoarthritis," that the Claimant has chronic pain syndrome, and that the Claimant is not expected to recover from these conditions.

31. An affidavit by [REDACTED] dated March 31, 2009 (Ex. C.1) states in relevant part as follows:

I am [the Claimant's] significant other. I have been with her for five years now, and have been a first-hand witness to her medical problems and conditions. Over [those] five years her health has deteriorated immensely.

She has osteoarthritis which makes her hips, knees, hands, elbows and back in constant pain. She has shrunk two inches due to this condition. [She] also has a hard time in any position she puts her body in; it is painful for her whether she is sitting, standing or whatever, and is just getting harder for her.

She also has had a recent onset of diabetes. She is hypoglycemic. If her sugar level is off she is shaky, flushed, dizzy. She has to regularly test her blood sugar level. . . .

She also has hypothyroidism for which she has to take medication on a daily basis, and has hepatitis C [She] is in chronic pain.

32. At the hearings of February 24 and March 31, 2009 the Claimant testified that she:

- a. Wanted to be represented by [REDACTED]. However, at the hearing of March 31, 2009 she decided to go forward representing herself because [REDACTED] was not available.
- b. Has osteoporosis, arthritis, bone deterioration, hypertension, hyperthyroidism, diabetes, and hepatitis C. The diabetes is fairly new.
- c. Has arthritis mostly in her hands, hips, and knees.
- d. Gets shots in her hips to control the pain.

- e. Previously took medication for her hepatitis C for about one year but later discontinued the medication because the medication was making her sick. Her hepatitis C is now dormant.
- f. Currently takes medication for her hypertension and diabetes.
- g. Has difficulty making her bed because of the pain in her hands, hips, and knees.
- h. Has not been employed for approximately 1.5 years.
- i. Has worked as an assistant manager at McDonalds. In this capacity she worked in all positions, including doing paperwork.
- j. Has worked as a store clerk at Minute-Mart, a grocery store.
- k. Worked as a cosmetologist in 2002 – 2003 but cannot perform that work anymore because her hands are always hurting.
- l. Last worked as a personal care attendant for a company called Trinion. She took care of the lady next door, cleaned her house, washed her dishes, cooked 2 meals per day for her, and took her shopping. She spent almost 24 hours per day with this lady until the lady died.

33. At the hearing of February 24, 2009 the Claimant's witness, [REDACTED], testified that he is the Claimant's boyfriend and that the Claimant lives with him.

34. [REDACTED] (RN, BSN, MPA) is a nurse consultant / medical reviewer employed by DPA (Ex. 8.0). She has been a registered nurse since 1969. *Id.* Since September 2003 she has been the medical reviewer for the Interim Assistance program (Ex. 8.1). She is a member of the National Association of Disability Examiners (Ex. 8.3). At the hearing of March 31, 2009 [REDACTED] testified that:

- a. She is a registered nurse (R.N.) employed by the Division who reviews medical information for Interim Assistance determinations.
- b. She performed the medical eligibility review in this case.
- c. During the eligibility review process, she initially receives a Form AD-2 from the eligibility technician. If that form contains enough information to allow a decision to be made, she makes the decision at that time. Otherwise, she obtains releases from the claimant, requests additional medical documents from the sources for which releases are provided, and then reviews the medical documents provided in response to the releases. She does not speak or meet directly with the Claimant.
- d. Diabetes and hypertension, and hyperthyroidism are all chronic, treatable conditions. The medical records do not indicate any complications resulting from those conditions.

- e. The Claimant's hepatitis C is not considered disabling because there is no evidence of bleeding esophageal varices or abdominal ascites indicating end stage liver disease.
- f. The Claimant's osteoarthritis is treatable.
- g. She believes that the Claimant's functional ability is not significantly limited. Accordingly, she believes that the Claimant can perform her own Activities of Daily Living (ADLs) and can therefore perform some type of light or sedentary work such as office work or answering telephones.
- h. She denied the Claimant's application for Interim Assistance benefits based solely on the medical evidence in the file.

35. There was some discussion of polysubstance abuse in Ms. [REDACTED]'s written reports and in her hearing testimony. The Claimant did not, however, allege substance abuse or addiction as a basis for her disability claim.

PRINCIPLES OF LAW

Introduction; Burden of Proof; Standard of Proof.

This case involves an application for Interim Assistance benefits. When an application is denied, the applicant has the burden of proof^{3a} by a preponderance of the evidence.⁴

Interim Assistance is a benefit provided by the State of Alaska to Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve their Supplemental Security Income application. AS 47.25.255; 7 AAC 40.170(a) and (b). The criteria which must be satisfied in order to qualify for Interim Assistance are set forth in 7 AAC 40.180.⁵ These criteria

^{3a} "Ordinarily the party seeking a change in the status quo has the burden of proof." *State of Alaska Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁴ Preponderance of the evidence is the standard of proof generally applicable in administrative proceedings. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Commission*, 711 P.2d 1170 (Alaska 1986). The regulations applicable to this case do not specify any particular standard of proof. Accordingly, the "preponderance of the evidence" standard is the standard of proof applicable to this case. Preponderance of the evidence is defined as "[e]vidence 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* at page 1064 (West Publishing, 5th Edition, 1979).

⁵ 7 AAC 40.180, titled "initial determination of disability", provides as follows:

- (a) An applicant whose disability is being determined by the department under 7 AAC 40.170(b) must be examined by a psychiatrist or other physician who has entered into a current provider agreement under 7 AAC 43.065. The results of the examination must be provided on a form approved by the department.

are equivalent to, and incorporate by reference, the criteria which must be satisfied in order to qualify for Social Security Supplemental Security Income (SSI) disability benefits pursuant to Title 20 of the Code of Federal Regulations (CFR).

A disability determination based on the SSI criteria involves a sequential evaluation. *Briscoe ex rel. Taylor v. Barnhart*, 425 F.3d 345, 351-52 (7th Cir. 2005). This evaluation considers whether (1) the claimant is presently employed; (2) the claimant has a severe impairment or combination of impairments (the duration of the impairment is an aspect of this severity requirement); (3) the claimant's impairment meets or equals any impairment listed in the regulations as being so severe as to preclude substantial gainful activity; (4) the claimant's residual functional capacity leaves him unable to perform his past relevant work; and (5) the claimant is unable to perform any other work existing in significant numbers in the national economy. 20 C.F.R. §§ 404.1520, 416.920. A finding of disability requires an affirmative answer at either step three or step five, above.

I. Substantial Gainful Activity.

The first step in the analysis is to determine whether the applicant is performing “substantial gainful activity” as defined by the applicable Social Security regulations. “[S]ubstantial gainful activity” means “work that (a) involves doing significant and productive physical or mental duties, and (b) is done (or intended) for pay or profit.” 20 CFR 404.1510. If the applicant is engaged in “substantial gainful activity” based on these criteria, then he or she is not disabled. 20 CFR 416.920(a)(4)(i). If, however, the Claimant is not performing “substantial gainful activity” as defined by the above-quoted regulations, it is necessary to proceed to the next step of the disability analysis and determine whether the Claimant has a severe impairment.

(b) The department will make a determination of whether the applicant is disabled based on

(1) a medical review by the department as to whether the applicant is likely to be found disabled by the Social Security Administration, including whether the applicant's impairment meets (A) The SSI program's presumptive disability criteria under 20 C.F.R. 416.934, as revised as of April 1, 2005, and adopted by reference; or (B) 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;

(2) medical evidence provided by the applicant or obtained by the department;

(3) other evidence provided by the applicant under 7 AAC 40.050, if applicable; and

(4) a review of the written results of the psychiatrist's or other physician's examination under (a) of this section.

(c) In determining whether an applicant's disability meets the criteria set out in (b)(1)(B) of this section, the department will consider whether

(1) the applicant's condition is listed as an impairment category described in (b)(1)(B) of this section;

(2) the medical information obtained under (b) of this section documents the applicant's impairment;

(3) the impairment affects the applicant's activities of daily living;

(4) the applicant can perform any other work, including sedentary work; and

(5) the applicant's impairment has lasted or is expected to last for a continuous period of not less than 12 months.

II. Severe Impairment.

The second step in the analysis is to determine whether the applicant's impairment is "severe" as defined by the applicable Social Security regulations. A severe impairment is one that significantly limits a person's physical or mental ability to perform "basic work activities." 20 C.F.R. 404.1521(a); 20 CFR 416.920(c); 20 CFR 416.921(a). 20 CFR 416.921(b) defines "basic work activities." That regulation states in relevant part as follows:

When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include - (1) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (2) capacities for seeing, hearing, and speaking; (3) understanding, carrying out, and remembering simple instructions; (4) use of judgment; (5) responding appropriately to supervision, co-workers and usual work situations; and (6) dealing with changes in a routine work setting.

Evidence from acceptable medical sources is necessary to establish whether a claimant has a medically determinable impairment. 20 C.F.R. § 404.1513(a); see also 20 CFR 416.908. The claimant's own statement of symptoms alone will not suffice. 20 C.F.R. § 416.908.

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 it is necessary to proceed to the next step of the disability analysis and determine whether the Claimant's impairment meets the 12 month durational requirement.⁶

ANALYSIS

Introduction.

As an applicant for Interim Assistance benefits, the Claimant has the burden of proving, by a preponderance of the evidence, that her impairments satisfy the Social Security disability criteria (see Principles of Law, above). If they do, the Claimant is disabled by Social Security standards and is 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.

I. Is The Claimant Performing Substantial Gainful Activity?

The first element of the disability analysis is whether the Claimant is performing "any substantial gainful activity." Pursuant to 20 CFR 404.1510, "substantial gainful activity" means "work that (a) involves doing significant and productive physical or mental duties, and (b) is done (or intended) for pay or profit."

At the hearing the Claimant testified that she was not currently working and that she had not worked for the past 1.5 years. This testimony was not disputed by the Division. Accordingly, the Claimant

⁶ In this case it is not necessary to discuss the remaining steps in the disability analysis because the Claimant has been found to be not disabled at step 2 of the analysis (i.e. the Claimant's impairments are not severe).

has carried her burden and has proven, by a preponderance of the evidence, that she is not performing substantial gainful activity as defined by 20 CFR 404.1510.

II. Does The Claimant Have a Severe Impairment?

The Claimant asserts five (5) impairments in this case (Claimant hearing testimony, Exs. B.2 – B.3). These are diabetes, hepatitis C, hypertension, hypothyroidism, and osteoarthritis (with chronic pain syndrome). *Id.* The Claimant testified that the osteoarthritis affects her hands, hips, and knees. *Id.* There was other lay testimony that the osteoarthritis also affects the Claimant’s elbows and back (Marquez affidavit – Ex. C.1).

In order to avoid being found to be *not disabled* at this stage, the Claimant must prove that at least one of her impairments is medically severe pursuant to 20 CFR 416.920(c). A “severe impairment” is one that “significantly limits [a person’s] physical or mental ability to do basic work activities.” 20 CFR §§ 404.1520(c) and 416.920(c).

20 CFR 416.921(b) defines “basic work activities.” That regulation states in relevant part as follows:

When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include - (1) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (2) capacities for seeing, hearing, and speaking; (3) understanding, carrying out, and remembering simple instructions; (4) use of judgment; (5) responding appropriately to supervision, co-workers and usual work situations; and (6) dealing with changes in a routine work setting.

Each of the Claimant’s five impairments must be examined to determine whether one or more of them “significantly limits” the Claimant’s physical or mental ability to perform “basic work activities” as defined above.

A. Diabetes (SSA Impairment Listing No. 9.08).

The Division did not dispute that the Claimant has diabetes. At issue is whether the Claimant’s diabetes significantly limits her ability to perform basic work activities as those activities are defined by 20 CFR 416.921(b) (quoted above).

The Claimant herself did not testify that her diabetes limits her ability to perform work activities. The only evidence in the record regarding the effect of the Claimant’s diabetes on her functional abilities is the affidavit of [REDACTED] dated March 31, 2009 (Ex. C.1). That affidavit states that “if [the Claimant’s] sugar level is off she is shaky, flushed, dizzy.”

[REDACTED]’ affidavit testimony establishes that the Claimant’s diabetes has several unpleasant side effects. However, it falls short of establishing any significant limitation on the Claimant’s work activities. Moreover, to satisfy the “step two” requirement of a severe impairment, the Claimant must provide medical evidence that the impairment imposes such limitations. 20 C.F.R. § 416.908. There is no such medical evidence in this case.

In summary, the Claimant has failed to prove, by a preponderance of the evidence, that her diabetes significantly limits her ability to perform “basic work activities” as defined by 20 CFR 416.921(b). Accordingly, the Claimant’s diabetes is not medically severe pursuant to 20 CFR 416.920(c) and therefore cannot serve as a basis for a finding of disability.

B. Hepatitis C (SSA Impairment Listing No. 5.05).

The fact that the Claimant has hepatitis C is not in dispute. The chart review by hepatologist [REDACTED], M.D. dated December 5, 2007 (Exs. 2.0035 – 2.0036), confirms that the Claimant’s hepatitis C has damaged at least one of her internal organs (see Findings of Fact at Paragraph 13 - “Hepatitis C with advanced disease. Liver biopsy in 2004 showed marked bridging fibrosis Splenomegaly secondary to advanced liver disease”).

The matter at issue, however, is whether the Claimant’s hepatitis C significantly limits her ability to perform basic work activities as those activities are defined by 20 CFR 416.921(b). The Claimant did not assert that her hepatitis C currently limits her ability to perform work activities. Neither did [REDACTED]. Rather, the Claimant testified that her hepatitis C was currently dormant or in remission.

Also, to satisfy the “step two” requirement of a severe impairment, the Claimant must provide medical evidence that the impairment causes significant limitations. 20 C.F.R. § 416.908. There is no such medical evidence in this case.

In summary, the Claimant has failed to prove, by a preponderance of the evidence, that her hepatitis C significantly limits her ability to perform “basic work activities” as defined by 20 CFR 416.921(b). Accordingly, the Claimant’s hepatitis C is not medically severe pursuant to 20 CFR 416.920(c) and therefore cannot serve as a basis for a finding of disability.

C. Hypertension (SSA Impairment Listing No. 4.00H).

There is no dispute that the Claimant has hypertension. However, neither the Claimant nor Mr. [REDACTED] testified that the Claimant’s hypertension limits her ability to perform work activities. Further, to satisfy the “step two” requirement of a severe impairment, the Claimant must provide medical evidence that the impairment imposes functional / work limitations. 20 C.F.R. § 416.908. There is no such medical evidence in this case.

In summary, the Claimant has failed to prove, by a preponderance of the evidence, that her hypertension significantly limits her ability to perform “basic work activities” as defined by 20 CFR 416.921(b). Accordingly, the Claimant’s hypertension is not medically severe pursuant to 20 CFR 416.920(c) and therefore cannot serve as a basis for a finding of disability.

D. Hypothyroidism (SSA Impairment Listing No. 9.02).

The fact that the Claimant has hypothyroidism was not disputed. However, neither the Claimant nor Mr. [REDACTED] testified that the Claimant’s hypothyroidism limits her ability to perform work activities. Further, to satisfy the “step two” requirement of a severe impairment, the Claimant must

provide medical evidence that the impairment imposes functional / work limitations. 20 C.F.R. § 416.908. There is no such medical evidence in this case.

In summary, the Claimant has failed to prove, by a preponderance of the evidence, that her hypothyroidism significantly limits her ability to perform “basic work activities” as defined by 20 CFR 416.921(b). Accordingly, the Claimant’s hypothyroidism is not medically severe pursuant to 20 CFR 416.920(c) and therefore cannot serve as a basis for a finding of disability.

E. Osteoarthritis of the hands, elbows, back, hips, and/or knees (SSA Impairment Listing No. 1.00 et. seq.).

The Division did not dispute that the Claimant has osteoarthritis affecting several of her joints. The issue at this stage is whether the Claimant’s osteoarthritis significantly limits her ability to perform basic work activities.

The Claimant testified that she has difficulty making her bed because of the pain in her hands, hips, and knees. She did not testify as to pain in her elbows and back. However, Mr. [REDACTED]’ affidavit dated March 31, 2009 (Ex. C.1) states in relevant part as follows:

[The Claimant] has osteoarthritis which makes her hips, knees, hands, elbows and back in constant pain . . . [She] also has a hard time in any position she puts her body in; it is painful for her whether she is sitting, standing or whatever . . .

The testimony of the Claimant and of Mr. [REDACTED] indicates that the Claimant could perhaps be expected to have difficulty with physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling. This could indicate that the Claimant’s osteoarthritis with pain syndrome constitutes a severe impairment under 20 CFR §§ 404.1520(c), 416.920(c), and 416.921(b).

However, a finding that a claimant’s impairment is severe cannot be based solely on the claimant’s testimony or other lay testimony alone; rather, a claimant must provide medical evidence confirming that the impairment imposes functional / work limitations. 20 C.F.R. § 416.908. The existing medical evidence indicates that the Claimant’s osteoarthritis is not severe:

1. A radiological study of the Claimant’s hands and wrists, dated January 28, 2005, showed “possible rheumatoid disease” with “minimal changes” (Ex. 2.0024).
2. A radiological study of the Claimant’s left hip, dated March 6, 2006, did not indicate any abnormality (Ex. 2.0024).
3. A radiological study of the Claimant’s lumbosacral spine performed on August 22, 2007 (Ex. 2.0044) found in relevant part that “there is *mild* narrowing and hypertrophic spurring at the L2-3 disc . . . The pedicles and grossly the sacroiliac and acetabular joints appear *intact* . . . Impression: *Mild* degenerative disc disease at L2-3.” [Emphasis added].

The record also contains one brief reference to chronic pain syndrome. See the *Preliminary Examination for Interim Assistance* (Form AD-2) prepared by treating physician [REDACTED]

██████████, M.D. dated January 30, 2009 (Exs. A.2 – A.3 and B.2 – B.3). Otherwise, the Claimant’s complaints of pain have been reported to be “out of proportion to her clinical findings” (Ex. 2.0252).

Is the foregoing reference sufficient to support a finding that the Claimant has a severe impairment based on chronic pain syndrome due to osteoarthritis? The American Medical Association (AMA) has identified six characteristics (“the six Ds”) that “should be considered as establishing the diagnosis of a chronic pain syndrome.” AMA Guides to the Evaluation of Permanent Impairment (Third Edition, November 1988) at p. 241. These six characteristics are duration, dramatization, drugs, despair, disuse, and dysfunction. *Id.* See also Task Force on Taxonomy of the International Association for the Study of Pain (H. Merskey and B. Nikolai, editors), Classification of Chronic Pain, Descriptions of Chronic Pain Syndromes, and Definitions of Pain Terms (Second Edition 1994) at pages 41-42.

There is no medical evidence in the record (no diagnostic imaging, lab reports, test results, etc.) concerning any of the six factors (discussed above) relevant to a diagnosis of chronic pain syndrome. Thus, there is no evidence in the record to support Dr. ██████████’s finding that the Claimant suffers from chronic pain syndrome. Moreover, there is no medical evidence in the record regarding what effect chronic pain syndrome (if established) would have on the Claimant’s functional abilities.

In summary, the Claimant has failed to prove, by a preponderance of the evidence, that her osteoarthritis (with or without chronic pain syndrome) significantly limits her ability to perform “basic work activities” as defined by 20 CFR 416.921(b). Accordingly, the Claimant’s osteoarthritis is not medically severe pursuant to 20 CFR 416.920(c) and therefore cannot serve as a basis for a finding of disability.

CONCLUSIONS OF LAW

1. The Claimant carried her burden and proved, by a preponderance of the evidence, that she is not currently engaged in substantial gainful activity as defined by 20 CFR 404.1510.

2. The Claimant failed to prove, by a preponderance of the evidence, that her

Diabetes (SSA Impairment Listing No. 9.08),
Hepatitis C (SSA Impairment Listing No. 5.05),
Hypertension (SSA Impairment Listing No. 4.00H),
Hypothyroidism (SSA Impairment Listing No. 9.02), or
Osteoarthritis of the hands, elbows, back, hips, and/or knees (SSA Impairment Listing No. 1.00 et. seq.)

constitute “severe impairments” as defined by 20 CFR §§ 404.1520(c), 416.920(c), and 416.921(b).

3. Because the Claimant’s impairments are not severe as defined by 20 CFR §§ 404.1520(c), 416.920(c), and 416.921(b), the Claimant is deemed not to be disabled pursuant to 20 CFR 416.920(a)(4)(ii).

4. The Division was therefore correct when it denied, on or about November 21, 2008, the Claimant's application for Interim Assistance benefits submitted on or about September 30, 2008.

DECISION

The Division was correct when it denied, on or about November 21, 2008, the Claimant's application for Interim Assistance benefits submitted on or about September 30, 2008.

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 of the Division of Public Assistance. 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 August, 2009.

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this _____ day of August 2009 true and correct copies of the foregoing were sent to the Claimant via U.S.P.S. mail, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested

_____, Director
_____, Policy & Program Development
_____, Staff Development & Training
_____, Administrative Assistant II
_____, Eligibility Technician I
_____, Fair Hearing Representative

By _____
J. Albert Levitre, Jr.
Law Office Assistant I