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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. 09-FH-54
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Interim Assistance benefits on or about August 18, 2008 (Ex. 3). The Division of Public Assistance (DPA or Division) denied the application on or about January 16, 2009 (Ex. 3). The Claimant requested a fair hearing contesting the denial on or about February 3, 2009 (Exs. 4.0, 4.1). A Notice of Hearing was mailed to the Claimant on or about February 9, 2009. This office has jurisdiction to decide this case pursuant to 7 AAC 49.010.

Hearings were held on February 25, March 18, and May 6, 2009 before Hearing Officer Patricia Huna-Jines.¹ The Claimant did not appear at the hearing of February 25, 2009. However, DPA did not object to postponing the hearing, and so the hearing was rescheduled for March 18, 2009. On March 18, 2009 the hearing was continued to May 6, 2009 to allow the Claimant to obtain additional medical records. The hearing was concluded on May 6, 2009.

The Claimant appeared telephonically at the hearings of March 18, 2009 and May 6, 2009. The Claimant represented himself and testified on his own behalf. DPA Public Policy Analyst [REDACTED] appeared in person at each of the hearings 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 during the hearing of March 18, 2009.

¹ Following the hearing this case was reassigned to Hearing Officer Jay Durych. Mr. Durych reviewed the recordings of the three hearings, and reviewed the 156- page case file, prior to preparing and issuing this decision.

ISSUE

Was the Division correct to deny the Claimant's application for Interim Assistance Benefits on or about January 16, 2009 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] (Ex. 16.27) and was [REDACTED] years old at the time of the hearings held in this case.
2. The Claimant applied for Interim Assistance benefits on or about August 18, 2008 (Ex. 3). The Division of Public Assistance (DPA or Division) denied the application on or about January 16, 2009 (Ex. 3). The Claimant requested a fair hearing contesting the denial on or about February 3, 2009 (Exs. 4.0, 4.1).
3. The physical impairment asserted by the Claimant in this case is Porphyria Cutanea Tarda (PCT) ³ (Claimant hearing testimony). Research indicates that this condition has not yet been assigned a specific Impairment Listing Number by the Social Security Administration (SSA), and there are only four reported Social Security disability decisions in which the condition has been discussed. However, because the condition involves the liver, blood, and skin, it could logically be analyzed under Digestive System Disorders (SSA Impairment Listing No. 5.00); Hematological Disorders (SSA Impairment Listing No. 7.00); and/or Skin Disorders (SSA Impairment Listing No. 8.00).
4. The Claimant reported that he had a head injury in 1988 (Ex. 16.22). However, neither the Claimant nor his doctors currently asserted that any disabling impairment resulted from this head injury.
5. Medical records dated from October 1995 through December 1999 (Exs. Nos. 16.2 - 16.27) indicate that the Claimant was diagnosed and treated during this period for (a) alcohol and cannabis

² All of the medical reports in the record (about 156 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. Finally, abbreviations used in the medical reports have been spelled out in this decision for ease of understanding.

³ Porphyria cutanea tarda (PCT) results from underactivity of the enzyme uroporphyrinogen decarboxylase, which leads to accumulation of porphyrins in the liver. See Merck Manual, online version, at <http://www.merck.com/mmhe/sec12/ch160/ch160b.html> (date accessed July 14, 2009). People with porphyria cutanea tarda experience chronic, recurring blisters of various sizes on sun-exposed areas such as the arms, face, and especially the backs of the hands. *Id.* Crusting and scarring follow the blisters and take a long time to heal. *Id.* The skin, especially on the hands, becomes sensitive to minor injury. *Id.* Liver damage usually occurs, and cirrhosis and even liver cancer may eventually develop. *Id.*

dependence, (b) auditory and visual hallucinations, (c) Personality Disorder N.O.S., and (d) schizoaffective disorder. However, neither the Claimant nor his doctors currently assert that any of these conditions constitute a disabling impairment.

6. On April 30, 1999 the Claimant was seen at the [REDACTED] Hospital emergency department for left side arm and back pain (Ex. 2.10). Examination indicated no serious conditions or injuries. *Id.*

7. On September 15, 2000 the Claimant was seen at the [REDACTED] Hospital emergency department for depression (Ex. 2.9). The Claimant was examined and given a prescription for Prozac. *Id.*

8. A radiological study of the Claimant's left wrist taken on April 23, 2001 showed no fracture and no avulsion with all bony structures intact and in good alignment (Ex. 2.27).

9. On June 20, 2001 the Claimant was involved in an accident while riding his 3-wheel all terrain vehicle (Ex. 2.7). The Claimant was knocked unconscious. *Id.* The next day (June 21, 2001) the Claimant was seen at the [REDACTED] Hospital emergency department. *Id.*

10. On June 21, 2001 a radiological study of the Claimant's chest was performed (Exs. 2.19 - 2.22). The study indicated the "possibility of chronic obstructive pulmonary disease or asthma," but the scan was otherwise normal and "no acute intrathoracic abnormalities [were] identified." *Id.*

11. On June 21, 2001 a radiological study of the Claimant's cervical spine was also performed (Exs. 2.19 - 2.21). There was no evidence of any fracture. *Id.*

12. On June 21, 2001 a radiological study of the Claimant's head was also performed (Exs. 2.23 - 2.26). The study noted sinusitis and "superficial soft tissue swelling over the right temporal area," but there were no fractures and the results of the scan were otherwise normal. *Id.*

13. On July 19, 2001 the Claimant was involved in another accident while riding his 3-wheel all terrain vehicle (Exs. 2.5, 2.16). On July 19, 2001 a radiological study of the Claimant's right shoulder was performed (Ex. 2.18). The study indicated shoulder separation / displacement, but no fractures. *Id.*

14. On November 1, 2001 an MRI of the Claimant's right shoulder was performed (Exs. 2.16 - 2.17). The MRI indicated soft tissue swelling and a possible partial tear of the coracoclavicular ligament. *Id.*

15. On April 6, 2004 the Claimant was injured when an air compressor that he was using failed (Ex. 2.12). A radiological study of the Claimant's thoracic spine was performed (Ex. 2.12). No abnormalities were noted. *Id.* Radiological studies of the Claimant's right forearm, wrist, and hand were also performed (Exs. 2.13 - 2.15). These indicated that the Claimant had fractured his right ulna and right index finger, but that there was no damage to the Claimant's wrist (Exs. 2.13 - 2.15).

16. On May 30, 2008 the Claimant was given an echocardiogram and exercise stress test because he had complained of intermittent chest pains for the preceding several months (Exs. 2.35 - 2.39). Examination indicated frequent variations in heart rate while resting. *Id.* However, there were no

structural heart abnormalities, and the results of both the echocardiogram and the stress test were considered normal. *Id.*

17. On August 21, 2008 the Claimant's treating physician [REDACTED] D.O. completed a Form AD-2 (Preliminary Examination for Interim Assistance) on behalf of the Claimant (Exs. 2.3 – 2.4). Dr. [REDACTED] diagnosed the Claimant with Porphyria Cutanea Tarda (PCT). *Id.* Dr. [REDACTED] further stated that "clinical and biochemical remission occurs within 5 to 12 months after regular phlebotomy." *Id.*

18. The Claimant's blood was drawn and tested on August 1, 2008; August 11, 2008; September 5, 2008; September 12, 2008; September 19, 2008; September 26, 2008; October 3, 2008; October 8, 2008; October 10, 2008; October 17, 2008; October 24, 2008; November 7, 2008; November 10, 2008; November 14, 2008; December 5, 2008; December 12, 2008; December 19, 2008; December 21, 2008; December 26, 2008; January 2, 2009; and January 8, 2009 (Exs. A.15 – A.55). These blood tests appear to confirm Dr. [REDACTED] diagnosis of the Claimant with Porphyria Cutanea Tarda (PCT) (Exs. A.15 – A.55).

19. The Claimant was seen by Dr. [REDACTED] or one of his staff on August 1, 2008; August 15, 2008; August 22, 2008; September 3, 2008; September 5, 2008; October 3, 2008; October 10, 2008; October 24, 2008; November 7, 2008; December 5, 2008; December 31, 2001; and January 2, 2009 (Exs. A.4 – A.14).

20. Notes from an examination of the Claimant by Dr. [REDACTED] or one of his staff dated October 10, 2008 state in relevant part as follows (Ex. A.9):

Patient presents for follow up of hands. Patient states scabs are getting better but still getting blisters. Patient states his hands are very tender and "tear" open easily and hurt all the time . . . PCT improving with therapy . . . Continue weekly blood draws

21. Notes from an examination of the Claimant by Dr. [REDACTED] or one of his staff dated December 5, 2008 state in relevant part as follows (Ex. A.6):

Patient presents for follow up. He reports hands have improved but still tender when putting hands in pockets Dorsal hands continue to heal well; single small blister noted on right dorsal hand. Forearms are essentially clear PCT improvement again noted . . . Continue weekly blood draws

22. Notes from an examination of the Claimant by Dr. [REDACTED] or one of his staff dated January 2, 2009 state in relevant part as follows (Ex. A.5):

Patient presents for follow up of PCT which reportedly has improved but patient states hands still "hurt and burn" Dorsal hands clearing well. No blisters noted. No new lesions. PCT resolving well with therapy labs improved

23. A letter from the Claimant's treating physician [REDACTED], D.O. to [REDACTED], R.N. dated March 19, 2009 (Ex. A.0) states in relevant part as follows:

I am not a disability specialist; however, I would report the following: (1) I believe the patient is able to perform physical activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, or traveling.

24. At the hearings of March 18, 2009 and May 6, 2009 the Claimant testified that he:
- a. Had Porphyria Cutanea Tarda (PCT) for approximately 2 years, but has only been receiving treatment since about August 2008.
 - b. Was receiving treatment for PCT up until approximately 2 months before the hearings in this case. At that time he was dropped from or forced to discontinue further treatment because he does not have health insurance and cannot afford to pay the necessary treatment fees.
 - c. Has PCT which has made the skin on his hands and arms so soft and tender that, when he reaches into his carpenter's bags, the skin on his hands and arms peels off and he gets blisters.
 - d. Currently has blisters on his hands. He developed a crack or lesion on his hand on March 18, 2009 while vacuuming.
 - e. Has worked as a carpenter all his life. Carpentry is seasonal work.
 - f. Has not been able to work for the last 2 years because potential employers will not hire him due to the condition of his hands and arms.
 - g. People with PCT are supposed to avoid direct sunlight. He cannot work as a carpenter if he has to avoid direct sunlight.
 - h. Previously had regular blood draws to treat his PCT every week for a period of 4-5 months. However, when he gives blood, he is "down" for 2-3 days thereafter.
25. At the hearing of March 18, 2009 [REDACTED], R.N. testified that she:
- a. Is a registered nurse (R.N.) employed by the Division who reviews medical information for Interim Assistance determinations.
 - b. 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.

- d. The Claimant's primary diagnosis was PCT. PCT is a condition caused by the lack of an enzyme which allows iron to build-up in the patient's blood. This condition manifests itself through skin problems such as blisters.
- e. The treatment for PCT is to have periodic phlebotomies (to have regular blood draws; to donate blood on a regular basis). The condition generally does not re-occur if the patient has regular blood draws.
- f. Based on the medical records she believes that the Claimant can perform light or sedentary work.

26. [REDACTED] disability opinion is based solely on her review of the medical records. She does not meet with the applicant during the medical review process.

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 to Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve the 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

^{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 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.

(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

The criteria which must be satisfied in order to qualify for Interim Assistance under 7 AAC 40.180 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).

Pursuant to 20 CFR 404.1505(a), “disability” is defined as “the inability to do 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 12 months.” Based on this definition, the Social Security Administration’s SSI disability analysis contains a very specific multistep process that must be followed in order to determine whether someone is disabled.

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.

The regulations state that work “may be substantial even if it is done on a part time basis . . .”. 20 CFR 404.1572(a). If the applicant is engaged in “substantial gainful activity” based on these criteria, then he 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.

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:

(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 the

- (1) the applicant's condition is listed as an impairment category described in (b)(1)(B) of this section;
- (2) medical information obtained under (b) of this section documents the applicant's impairment;
- (3) 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.

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.

Acceptable medical sources include licensed physicians; licensed or certified psychologists; licensed optometrists; licensed podiatrists; and qualified speech-language pathologists. 20 C.F.R. § 404.1513(a). The sources may be treating sources, examining sources, or reviewing sources. Substantial weight must be given to the opinion, diagnosis and medical evidence of these medical providers unless there is good cause to do otherwise. 20 C.F.R. § 416.1527(d); see also *Lewis v. Callahan*, 125 F.3d 1436, 1440 (11th Cir.1997).

If the impairment *is not* “severe” according to the above definitions, the applicant is deemed not to be disabled. 20 CFR 416.920(a)(4)(ii). If the impairment *is* “severe” according to the above definitions, further analysis is then necessary to determine whether the applicant is disabled (see footnote 7, below).

Age of Medical Records.

In *Cook v. Psychiatric Sec. Review Board*, 860 P.2d 855 (Or. App. 1993), the court stated that “The passage of time does not necessarily render medical reports stale.” Similarly, in *Kroger Company v. Wright*, 2004 WL 1243039 (Va. App. 2004), the court stated:

“Whether evidence is stale and fails to reflect a claimant's medical condition is viewed as a question of fact, no different in substance from the obvious principle that evidence closer in time to the relevant event may be considered more persuasive than evidence more remote. Timing, however, is not necessarily the dispositive factor in evaluating the persuasiveness of evidence. It is merely one of many potential variables that enter into the fact finder's decision to attribute different weight to different evidence.”

Although the age at which medical records should be deemed stale will, (as indicated by the above cases), vary depending on the facts of the particular case, a review of recent court decisions indicates that medical records must generally be at least two (2) years old to be considered stale.⁶

⁶ For example, in *Covington v. Cinnirella*, 536 N.Y.S.2d 514, 515 (N.Y. App. Div. 2nd Dept. 1989), a medical report nearly two years old was deemed stale. In *Philpotts v. Petrovic*, 554 N.Y.S.2d 289, 290 (N.Y. App. Div. 2nd Dept. 1990), medical evidence which was more than two-and-a-half years old was deemed stale. In *Medina-Santiago v. Nojovits*, 773 N.Y.S. 2d 294 (N.Y.A.D. 1st Dept. 2004), medical evidence which was three years old was deemed stale. In the Social Security disability case *Lemus v. Astrue*, 2009 WL 817546 (E.D. Cal. 2009), medical evidence which was three years old was deemed stale. In *In re O'Donnell's Case*, 2007 WL 3052957 (Mass.App. 2007), medical evidence which was approximately 3.5 years old was deemed stale. In *Walker v. Allied Septic Tanks*, 522 So.2d 456 (Fla. App. 1st Dist. 1988),

ANALYSIS

Introduction.

As an applicant for Interim Assistance benefits, the Claimant has the burden of proving, by a preponderance of the evidence, that his impairment satisfies 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.

The only current impairment asserted by the Claimant in this case (and the only one noted by his treating physician Dr. [REDACTED]) is Porphyria Cutanea Tarda (PCT). As noted at pages 2-3 above, PCT has not yet been categorized by the Social Security Administration in its Listing of Impairments.

The Claimant also has a history of various physical injuries which occurred during the period 1999 - 2004 (see Findings of Fact at paragraphs 6 – 15, above). However, the Claimant did not assert that any of these old injuries were currently disabling, and there is likewise no medical evidence indicating that these old injuries are still affecting the Claimant. Further, the medical records discussing these injuries are now 5-10 years old. Without more recent medical records to corroborate the old records, the old records are now considered stale. See discussion in Principles of Law at pages 8-9, above.

Finally, the Claimant also has a more distant history of mental / psychological problems (see Findings of Fact at Paragraph 5, above). Specifically, medical records dated from October 1995 through December 1999 (Exs. Nos. 16.2 - 16.27) indicate that the Claimant was diagnosed and treated during this period for (a) alcohol and cannabis dependence, (b) auditory and visual hallucinations, (c) Personality Disorder N.O.S., and (d) schizoaffective disorder. However, the record indicates that neither the Claimant nor his doctors currently assert that any of these mental conditions constitute a disabling impairment. Further, the medical records discussing these psychological problems are now 10 - 14 years old. Without more recent medical records to corroborate the old records, the old records are now considered stale. See discussion in Principles of Law at pages 8-9, above.

In summary, the only allegedly disabling impairment asserted by the Claimant in this case, and the only current medical condition noted by the Claimant's treating physician Dr. [REDACTED], is Porphyria Cutanea Tarda (PCT). Accordingly, the sole issue to be determined in this case is whether the Claimant's PCT constitutes a disabling impairment according to the state and federal disability criteria discussed in the Principles of Law, above.

I. The Claimant Is Not Performing Substantial Gainful Activity.

The first element of the disability analysis is whether the Claimant is currently performing "any substantial gainful activity". Pursuant to 20 CFR 404.1510, "substantial gainful activity" means "work

medical evidence which was 3-4 years old was deemed stale. In the Social Security disability case *Griffith v. Astrue*, 2009 WL 909630 (W.D.N.Y. 2009), medical evidence which was approximately 4.5 years old was deemed stale. Finally, in *O'Neill v. Rogers*, 559 N.Y.S.2d 669 (N.Y. App. Div. 2nd Dept. 1990), medical reports which were over five years old were deemed stale.

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 he has not worked for approximately two (2) years (see Findings of Fact at paragraph 24(f), above). This testimony was not disputed by the Division. Accordingly, the Claimant has carried his burden and has proven, by a preponderance of the evidence, that he is not performing substantial gainful activity as defined by 20 CFR 404.1510.

II. Does The Claimant Have a Severe Impairment?

In order to avoid being found to be *not disabled* at this stage, the Claimant must prove that his impairment 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.

At the hearings, the Claimant testified with regard to his PCT that:

- a. His PCT has made the skin on his hands and arms so soft and tender that, when he reaches into his carpenter’s bags, the skin on his hands and arms peels off and he gets blisters.
- b. People with PCT are supposed to avoid direct sunlight. He cannot work as a carpenter if he has to avoid direct sunlight.
- c. He has previously had regular blood draws to treat his PCT every week for a period of 4-5 months. However, when he gives blood, he is “down” for 2-3 days thereafter.

The Claimant’s testimony, by itself, indicates that the Claimant’s PCT significantly limits his ability to lift, push, pull, reach, carry, or handle materials. This testimony, if corroborated, could conceivably support a finding that the Claimant’s PCT constitutes a medically severe impairment. However, 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.

A letter from the Claimant’s own treating physician [REDACTED], D.O. dated March 19, 2009 (Ex. A.0) states in relevant part as follows:

I am not a disability specialist; however, I would report the following: (1) I believe the patient is able to perform physical activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, or traveling.

The medical opinion of the Claimant's own treating physician thus directly contradicts the Claimant's testimony regarding the severity of his PCT. Without medical evidence to support his testimony, the Claimant cannot prevail.

In summary, the Claimant did not carry his burden of proof and failed to prove, by a preponderance of the evidence, that his Porphyria Cutanea Tarda (PCT) constitutes a "severe impairment" as defined by 20 CFR §§ 404.1520(c), 416.920(c), and 416.921(b). The Claimant is therefore not disabled according to the Social Security Administration's disability regulations, the requirements of which are incorporated by reference into the State of Alaska's Interim Assistance regulations. Finally, because the Claimant failed to satisfy the disability requirements at the second stage (severity) of the sequential disability analysis, it is not necessary to determine whether the Claimant satisfies any of the subsequent steps in the sequential evaluation.⁷

CONCLUSIONS OF LAW

1. The Claimant carried his burden and proved, by a preponderance of the evidence, that he 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 his Porphyria Cutanea Tarda (PCT) constitutes a "severe impairment" as defined by 20 CFR §§ 404.1520(c), 416.920(c), and 416.921(b).
3. Because the Claimant's impairment is 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 January 16, 2009, the Claimant's application for Interim Assistance benefits submitted on or about August 18, 2008.

DECISION

The Division was correct when it denied, on or about January 16, 2009, the Claimant's application for Interim Assistance benefits submitted on or about August 18, 2008.

⁷ The subsequent steps in the analysis require a determination of (1) whether the claimant's severe impairment has lasted for a continuous period of at least twelve (12) months or can be expected to last for a continuous period of at least twelve (12) months (20 CFR 416.909; 20 CFR 416.920(a)(4)(ii)); (2) whether the claimant's impairment meets or equals the criteria set forth in the Social Security Administration's Listing of Impairments (20 CFR Part 404, Subpart P, Appendix 1; 20 CFR 416.920(a)(4)(iii)); (3) whether the claimant can perform his prior work (20 CFR 416.920(a)(4)(iv)); and (if not) (4) whether the claimant can perform any other work (20 CFR 404.1545(a)(5)(ii); 20 CFR 416.920(a)(4)(v)).

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 July, 2009.

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this _____ day of July, 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:

_____ – 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