

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

|                   |   |                     |
|-------------------|---|---------------------|
| In the Matter of: | ) |                     |
|                   | ) |                     |
| H R. Q, JR.       | ) | OAH No. 12-0596-APA |
|                   | ) | Former OHA Case No. |
| _____             | ) | DPA Case No.        |

**DECISION**

**I. Introduction**

The issue in this case is whether Mr. H Q qualifies for Interim Assistance benefits. The Division of Public Assistance (DPA or Division) denied Mr. Q's application on the basis that his impairments did not meet or equal any of the Social Security Administration's disability listings, did not prevent him from performing his past work, and did not preclude him from performing all work in the national economy.<sup>1</sup>

This decision concludes that Mr. Q suffers from severe physical impairments and that his impairments satisfy the 12-month durational requirement. However, Mr. Q's impairments do not meet or equal the specific criteria of the applicable Social Security disability listings. As a result, Mr. Q does not satisfy the Interim Assistance program's eligibility requirements.<sup>2</sup> The Division's decision denying Mr. Q's application for Interim Assistance is therefore **AFFIRMED**.

**II. Facts**

**A. Mr. Q's Physical Impairments**

*1. Abdominal Pain*

Mr. Q has complained of intermittent abdominal pain since at least 1999.<sup>3</sup> At that time he was diagnosed as having mild pancreatitis and was given Demerol for the pain.<sup>4</sup>

In October 1999 Mr. Q was experiencing abdominal pain and had an abdominal ultrasound. The results came back normal.<sup>5</sup>

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<sup>1</sup> Laura Ladner hearing testimony.  
<sup>2</sup> See 7 AAC 40.180(b)(1).  
<sup>3</sup> Exhibits 3.184, 3.185.  
<sup>4</sup> *Id.*  
<sup>5</sup> Exhibit 3.603.

In January 2002 Mr. Q was experiencing abdominal pain and was evaluated for kidney stones. However, x-rays of his chest, abdomen, and pelvis revealed a "radiographically normal chest" and "no evidence for renal, ureteral, or bladder calculi."<sup>6</sup>

In October 2005 Mr. Q was having abdominal pains and his abdomen was x-rayed. The x-rays found no evidence of bowel obstruction and were otherwise normal.<sup>7</sup>

In December 2005 Mr. Q was suffering from pain in his left lower abdomen. A CT scan of his abdomen and pelvis was performed and the results were normal.<sup>8</sup> Mr. Q also underwent a colonoscopy.<sup>9</sup> Some swelling was noted but no lesions or diverticuli were observed.<sup>10</sup>

In February 2007 Mr. Q was having epigastric pain and underwent an abdominal ultrasound. The ultrasound disclosed no abnormalities.<sup>11</sup>

In September 2009 Mr. Q was suffering from rectal bleeding.<sup>12</sup> In October 2009 Mr. Q underwent a colonoscopy and anoscopy.<sup>13</sup> As part of this procedure his large intestine was biopsied and a hemorrhoid ligation was performed.<sup>14</sup>

In August 2011 and again in January 2012 a Division Form AD-2 was completed diagnosing Mr. Q with right lower quadrant (RLQ) pain. The diagnosis further indicated that Mr. Q was expected to recover from this pain in one month or less.

## 2. Asthma, Chest Pain, and Heart and Lung Issues

In April 2000 Mr. Q was experiencing a fever and cough and had chest x-rays. The x-rays revealed some pleural thickening and/or scarring in his lungs, but nothing to explain the fever or cough.<sup>15</sup>

In July 2000 Mr. Q was having sinus pain and had his sinuses x-rayed. The x-rays were within normal limits.<sup>16</sup> During this period Mr. Q was also having difficulty breathing and had his chest x-rayed. These x-rays were also within normal limits.<sup>17</sup>

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<sup>6</sup> Exhibit 3.593.

<sup>7</sup> Exhibit 3.586.

<sup>8</sup> Exhibits 3.581, 3.583.

<sup>9</sup> Exhibits 3.520, 3.521.

<sup>10</sup> Exhibits 3.520, 3.521, 3.605 - 3.608.

<sup>11</sup> Exhibit 3.577.

<sup>12</sup> Exhibits 3.501, 3.502.

<sup>13</sup> Exhibits 3.500, 3.643 - 3.648.

<sup>14</sup> *Id.*

<sup>15</sup> Exhibit 3.602.

<sup>16</sup> Exhibit 3.600.

<sup>17</sup> Exhibit 601.

In November 2001 Mr. Q was experiencing left-side chest pain and had x-rays. The x-rays came back showing a "normal chest".<sup>18</sup>

Mr. Q has had intermittent asthma since at least 2001.<sup>19</sup> However, his asthma symptoms resolve with the use of an albuterol nebulizer/inhaler.<sup>20</sup>

In March 2001 Mr. Q was experiencing left-side chest pain and had x-rays. The x-rays revealed no abnormalities.<sup>21</sup>

In April 2004 Mr. Q was experiencing chest pain and had x-rays. The x-rays came back showing a "normal study".<sup>22</sup>

In December 2004 Mr. Q was experiencing pain on the right side of his chest and had x-rays. The x-rays were normal.<sup>23</sup>

In August 2005 Mr. Q was having chest pains and his chest was x-rayed. The x-rays showed "no radiographic findings to explain [Mr. Q's] sharp left chest pain."<sup>24</sup>

In September 2005 Mr. Q was again having chest pains and his chest was again x-rayed. The x-rays showed no evidence of bony fractures, cardiovascular problems, or pulmonary disease.<sup>25</sup>

In February 2007 Mr. Q was suffering from chest pain and his chest was x-rayed. The x-rays revealed no heart or lung abnormalities.<sup>26</sup>

In June 2007 Mr. Q's chest was x-rayed. The x-rays revealed no heart abnormalities, but did indicate a thickening of the apical pleura of his lungs.<sup>27</sup>

### 3. Back and Neck Pain

In June 1999 Mr. Q was having neck pain and had his neck x-rayed. The x-rays showed minimal spondylosis at C5-C6 and were otherwise normal.<sup>28</sup>

In November and December 2000 Mr. Q was having neck pain and had his neck x-rayed. X-rays taken in November showed "persistent narrowing of C5-C6 with narrowing of

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<sup>18</sup> Exhibit 3.594.  
<sup>19</sup> Exhibit 3.160.  
<sup>20</sup> Exhibit 3.160.  
<sup>21</sup> Exhibit 3.596.  
<sup>22</sup> Exhibit 3.591.  
<sup>23</sup> Exhibits 3.589, 3.590.  
<sup>24</sup> Exhibit 3.588.  
<sup>25</sup> Exhibit 3.587.  
<sup>26</sup> Exhibit 3.578.  
<sup>27</sup> Exhibit 3.575.  
<sup>28</sup> Exhibit 3.604.

the C4-C5 intervertebral foramen on the right."<sup>29</sup> X-rays taken in December revealed mild degenerative disc changes at C5-C6 and C6-C7.<sup>30</sup>

In March 2004 Mr. Q was experiencing lower back pain and had x-rays. However, an x-ray of his lumbar spine revealed "no appreciable bony abnormality."<sup>31</sup>

In November 2005 Mr. Q was suffering from pain in his arms and neck. An MRI was performed on his cervical spine. The MRI showed mild disc space narrowing at C5-C6 and C6-C7 with small bulges/protrusions, but no evidence of stenosis.<sup>32</sup>

Mr. Q also had an MRI of his thoracic spine in November 2005. The MRI showed mild degeneration at T5-T6 through T9-T10, and a small disc protrusion at T9-T10 without evidence of stenosis.<sup>33</sup>

In May 2006 Mr. Q hurt himself lifting and complained of back pain radiating into his legs. However, an x-ray of his lumbar spine revealed no abnormalities.<sup>34</sup>

In January 2007 Mr. Q slipped and twisted his back. An x-ray of his lumbar spine showed no degenerative changes, alignment problems, or other abnormalities.<sup>35</sup>

In May 2007 Mr. Q's cervical spine was again x-rayed. The x-rays revealed degenerative changes at C5-C6.<sup>36</sup>

In April 2008 Mr. Q's lumbosacral spine was x-rayed. The x-rays revealed mild degenerative changes at L5-S1.<sup>37</sup>

#### 4. Shoulder, Hip, and Other Joint Pain

In November 2000 Mr. Q was having pain in his right hip and had it x-rayed. The x-rays revealed "no degenerative changes or fracture or dislocation."<sup>38</sup>

In August 2001 Mr. Q was experiencing pain in his right foot and had it x-rayed. The x-rays came back showing "no evidence of acute fracture or dislocation".<sup>39</sup>

In November 2008 Mr. Q had pain in his left shoulder. However, an x-ray of his shoulder revealed no fracture, dislocation, or degenerative changes.<sup>40</sup> Also in November 2008

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<sup>29</sup> Exhibit 3.599.  
<sup>30</sup> Exhibit 3.597.  
<sup>31</sup> Exhibit 3.592.  
<sup>32</sup> Exhibit 3.584.  
<sup>33</sup> Exhibit 3.585.  
<sup>34</sup> Exhibit 3.580.  
<sup>35</sup> Exhibit 3.579.  
<sup>36</sup> Exhibit 3.576.  
<sup>37</sup> Exhibit 3.574.  
<sup>38</sup> Exhibit 3.598.  
<sup>39</sup> Exhibit 3.595.

Mr. Q's cervical spine was x-rayed. The x-rays revealed degenerative changes at C5-C6 with disc space narrowing and anterior and posterior osteophyte formation.<sup>41</sup>

In February 2009 Mr. Q again had pain in his left shoulder. However, an x-ray of his shoulder again revealed no abnormalities.<sup>42</sup>

## 5. Summary

In summary, Mr. Q's testimony and medical records show that he has several longstanding impairments. He has shoulder and neck pain likely caused by degenerative changes in his cervical spine.<sup>43</sup> He has low back pain caused by degenerative changes in his lumbar spine.<sup>44</sup> He has abdominal and chest pain of unknown origin, and also has asthma.<sup>45</sup> The Division acknowledges that the shoulder and neck pain, low back pain, and abdominal pain are severe impairments.<sup>46</sup> The Division also acknowledged that each of these impairments has existed for more than 12 months.<sup>47</sup>

### ***B. Mr. Q's Education and Work History***

Mr. Q left school during the 12<sup>th</sup> grade without earning a high school diploma. He has received training in book keeping and accounting from the No Name Institute. Mr. Q has worked for a pharmacy as a driver and a pharmacy technician. He left that job after the law was changed to require all pharmacy employees to have a high school diploma. Mr. Q has also worked as a driver for a hotel, but he does not believe he is able to do that job because he cannot lift luggage and because turning his head while driving causes pain. Mr. Q does not drive for his personal transportation.

Mr. Q has also worked as a part time apartment manager, and has continued in that position through the date of the hearing. He works three hours per day, seven days a week. His job duties include changing light bulbs, vacuuming, sweeping, emptying the garbage, and shoveling snow. In exchange for his services Mr. Q is allowed to live in an apartment in the building that he manages for no charge. Mr. Q testified that apartments similar to his rent for about \$750.00 per month.

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<sup>40</sup> Exhibit 3.572.

<sup>41</sup> Exhibit 3.573.

<sup>42</sup> Exhibit 3.571.

<sup>43</sup> Exhibits 3.573, 3.584.

<sup>44</sup> Exhibit 3.574.

<sup>45</sup> Exhibit 3.160.

<sup>46</sup> The Division's witness stated that the asthma was not a severe impairment, but would impose some limitations on Mr. Q's ability to work.

<sup>47</sup> Mr. Q also recently experienced Right Lower Quadrant pain. This condition was expected to resolve within one month (Exhibit 12.1).

### ***C. Relevant Procedural History***

Mr. Q applied for Interim Assistance benefits on August 17, 2011.<sup>48</sup> On September 22, 2011, the Division of Public Assistance (Division) notified Mr. Q that his application for Interim Assistance had been denied.<sup>49</sup> Mr. Q requested a hearing to contest the denial of his application on September 23, 2011.<sup>50</sup>

Mr. Q's hearing was originally scheduled for November 23, 2011. On that date, however, the Division stated that it wished to review and re-analyze Mr. Q's medical records. Mr. Q agreed to postpone the hearing for this purpose.

Mr. Q's hearing was held on January 4, 2012. Mr. Q attended the hearing in person, represented himself, and testified on his own behalf. Public Assistance Analyst Jeff Miller attended the hearing in person and represented the Division. DPA Interim Assistance Medical Reviewer Laura Ladner participated in the hearing by telephone and testified on behalf of the Division. At the conclusion of the hearing the record was left open for thirty days to allow Mr. Q an opportunity to submit additional medical records, and to allow the Division to submit a response to those records. The record closed on February 3, 2012.

## **III. Discussion**

### ***A. The Three Step Interim Assistance Disability Determination Process***

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”<sup>51</sup> Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income (SSI) benefits.<sup>52</sup> Once an applicant is approved for federal Supplemental Security Income, he or she is then eligible to receive Adult Public Assistance benefits.<sup>53</sup>

Interim Assistance is a monthly payment in the amount of \$280 provided by the State to Adult Public Assistance applicants while they are waiting for the Social Security Administration (SSA) to approve their Supplemental Security Income application.<sup>54</sup>

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<sup>48</sup> Exhibit 2. Mr. Q signed the application on August 12, and it is date-stamped as received on August 17.

<sup>49</sup> Exhibit 5.0.

<sup>50</sup> Exhibit 5.1.

<sup>51</sup> AS 47.25.430.

<sup>52</sup> 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the Supplemental Security Income standards are not required to apply for Supplemental Security Income benefits. 7 AAC 40.170(a).

<sup>53</sup> 7 AAC 40.030(a); 7 AAC 40.170(a).

<sup>54</sup> 7 AAC 40.170(a) and (b); AS 47.25.455.

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”<sup>55</sup> An Interim Assistance applicant has the burden of proving, by a preponderance of the evidence, that he or she is likely to be found disabled by SSA.<sup>56</sup>

The SSA uses a five-step evaluation process in making its disability determinations.<sup>57</sup> Each step is considered in order, and if the SSA finds the applicant disabled at any step, it does not consider subsequent steps.<sup>58</sup>

The Division uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.<sup>59</sup> The first step looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the applicant is not disabled.<sup>60</sup> If the applicant is not performing “substantial gainful activity,” it is necessary to proceed to step two.

The second step requires the evaluation of the severity and duration of the applicant’s impairment. Medical evidence, which consists of “signs, symptoms, and laboratory findings, not only [the applicant’s] statement of symptoms,” is required to establish an applicant’s impairment.<sup>61</sup> In order to be considered disabled, the impairment or combination of impairments must be severe<sup>62</sup> and must be expected to result in death or must have lasted or be expected to last at least 12 months.<sup>63</sup> If the impairment is not severe or does not meet the duration requirement, the applicant is not disabled. If the impairment is severe and meets the duration requirement, the Division proceeds to step three.

The third step requires the evaluation of whether the impairment meets or equals one of the disability "listings" adopted by the SSA.<sup>64</sup> If the impairment satisfies the criteria of one of the SSA's listings, the applicant is disabled<sup>65</sup> and qualifies for Interim Assistance. If the applicant’s

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<sup>55</sup> 7 AAC 40.180(b)(1).

<sup>56</sup> A party who is seeking a change in the status quo has the burden of proof. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The normal standard of proof in an administrative proceeding, unless otherwise stated, is the preponderance of the evidence standard. *Amerada Hess Pipeline v. Alaska Public Utilities Commission*, 711 P.2d 1170, 1179 n.14 (Alaska 1986). See also 2 AAC 64.290(e).

<sup>57</sup> 20 C.F.R. § 416.920.

<sup>58</sup> 20 C.F.R. § 416.920(a)(4).

<sup>59</sup> See *In the Matter of L.G.*, OAH Case No. 12-0688-APA (Commissioner of DHSS, August 20, 2012).

<sup>60</sup> 20 C.F.R. § 416.920(a)(4)(i).

<sup>61</sup> 20 C.F.R. § 416.908.

<sup>62</sup> A severe impairment is one that “significantly limits [a person’s] physical or mental ability to do basic work activities.” 20 C.F.R. § 416.920(c).

<sup>63</sup> 20 C.F.R. § 416.920(a)(4)(ii); 20 C.F.R. § 416.909.

<sup>64</sup> See 20 C.F.R. Pt. 404, Subpart P, Appendix 1 (hereafter “Appendix 1”).

<sup>65</sup> 20 C.F.R. § 416.920(a)(4)(iii) and (d).

impairment does not meet or equal the criteria of one of the SSA's listings, the applicant does not qualify for Interim Assistance.<sup>66</sup>

***B. Application of the Three-Step Analysis to This Case***

***1. Step 1 - Is the Applicant Engaged in Substantial Gainful Activity?***

The first step of the disability analysis asks whether the applicant is performing “any substantial gainful activity.”<sup>67</sup> At hearing, Mr. Q testified that he was employed as a part time apartment manager, working three hours per day, seven days a week (a total of 21 hours of work per week). He receives free rent, valued at \$750.00 per month, in exchange for his services.

SSA income guidelines for 2012 allow non-blind disabled individuals to earn up to \$1,010.00 per month before their work or employment is considered “substantial gainful activity.”<sup>68</sup> This standard has been adopted by the Division for purposes of the Adult Public Assistance Program, of which the Interim Assistance Program is a part.<sup>69</sup>

Mr. Q's rental allowance of \$750.00 per month is less than the Interim Assistance Program's \$1,010.00 per month maximum earned income limit. Accordingly, Mr. Q has proven that he is not currently engaged in substantial gainful activity and has satisfied Step 1 of the disability analysis.

***2. Step 2 - Are the Severity and Duration Requirements Satisfied?***

***a. Severity***

At step two of the sequential evaluation process, the adjudicator must determine which of the applicant's alleged impairments, if any, are “severe.”<sup>70</sup> An impairment should be found to be “non-severe” only when the evidence establishes a “slight abnormality” that has “no more than a minimal effect” on an individual's ability to work.<sup>71</sup> The inquiry at Step 2 is “a de minimis screening device to dispose of groundless claims.”<sup>72</sup> If an adjudicator is unable to clearly determine the effect of an impairment or combination of impairments on the individual's ability to do basic work activities, the sequential evaluation should not end with the Step 2 “severity” evaluation.<sup>73</sup> Further, even if no single impairment is found to be severe under this lenient standard, each

<sup>66</sup> See *In the Matter of L.G.*, OAH Case No. 12-0688-APA (Commissioner of DHSS, August 20, 2012).

<sup>67</sup> 20 C.F.R. § 416.972 defines “substantial gainful activity” as work that (a) involves doing significant and productive physical or mental duties, and (b) is done (or intended) for pay or profit.

<sup>68</sup> See Social Security Administration website at <http://www.ssa.gov/OACT/COLA/sga.html> (date accessed October 5, 2012).

<sup>69</sup> See Adult Public Assistance Manual, Addendum 1.

<sup>70</sup> 20 C.F.R. § 404.1521.

<sup>71</sup> *Social Security Ruling (SSR)* 85-28, 1985 WL 56856 at 3 (SSA 1985); see also *Yuckert v. Bowen*, 841 F.2d 303, 306 (9<sup>th</sup> Cir. 1988); *Webb v. Barnhart*, 433 F.3d 683, 686 (9<sup>th</sup> Cir. 2006); *Kirby v. Astrue*, 500 F.3d 705, 707–08 (8<sup>th</sup> Cir. 2007); 20 C.F.R. §§ 404.1521(a), 416.921(a).

<sup>72</sup> *Smolen*, 80 F.3d at 1290 (citing *Bowen v. Yuckert*, 482 U.S. 137 (1987)).

<sup>73</sup> SSR 85-28.



impairment still must be considered in combination with all other impairments to determine whether the combined effect of multiple impairments is medically severe.<sup>74</sup>

The Division acknowledges that Mr. Q's shoulder pain, cervical/neck pain, lumbar/low back pain, and abdominal pain are severe impairments.<sup>75</sup> Accordingly, Mr. Q's physical impairments are medically severe and he has satisfied the first half of Step 2 of the disability analysis.

b. Duration

The next step, pursuant to 20 CFR 416.909, is to decide whether or not Mr. Q's impairments have lasted, or can be expected to last, for a continuous period of at least 12 months. In this regard, it is important to note that the 12 month duration requirement of 20 C.F.R. 416.909 is retrospective as well as prospective; it looks back in time as well as forward in time (i.e. the impairment "must have lasted or must be expected to last").

The Division acknowledged that each of the physical impairments listed in the preceding section has existed for more than 12 months.<sup>76</sup> The medical evidence confirms that these impairments meet the 12 month durational requirement. Accordingly, Mr. Q satisfies the second half of Step 2 of the disability determination process.

3. *Step 3 - Do any of the Applicant's Impairments "Meet the Listing?"*

The next step in the analysis is to determine whether the applicant's severe impairment(s) meets the specific criteria of one or more of the listings of impairments contained in the SSA's regulations at 20 C.F.R. Part 404, Subpart P, Appendix 1 ("the Listings").

The Division's Medical Reviewer asserted at hearing that Mr. Q's impairments (abdominal pain, asthma, back and neck pain, chest pain, and joint (shoulder and hip) pain) do not satisfy any SSA Listing. It is therefore necessary to examine each of Mr. Q's impairments to determine whether any of them meet or equal the requirements of a Listing.

a. Mr. Q's Abdominal Pain

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<sup>74</sup> 20 C.F.R. § 404.1523 states:

In determining whether your physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the law, we will consider the combined effect of all of your impairments without regard to whether any such impairment, if considered separately, would be of sufficient severity. If we do find a medically severe combination of impairments, the combined impact of the impairments will be considered throughout the disability determination process.

<sup>75</sup> The Division's witness stated that the asthma was not a severe impairment, but would impose some limitations on Mr. Q's ability to work.

<sup>76</sup> Mr. Q also recently experienced Right Lower Quadrant pain. However, this condition was expected to resolve within one month. Exhibit 12.1

The Social Security disability system classifies general abdominal pain (*i.e.* abdominal pain not established as relating to any other medical condition) under the Gastrointestinal Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, §5.06. This listing requires:

Inflammatory bowel disease (IBD) documented by endoscopy, biopsy, appropriate medically acceptable imaging, or operative findings with:

- A. Obstruction of stenotic areas (not adhesions) in the small intestine or colon with proximal dilatation, confirmed by appropriate medically acceptable imaging or in surgery, requiring hospitalization for intestinal decompression or for surgery, and occurring on at least two occasions at least 60 days apart within a consecutive 6-month period; OR
- B. Two of the following despite continuing treatment as prescribed and occurring within the same consecutive 6-month period:
  - 1. Anemia with hemoglobin of less than 10.0 g/dL, present on at least two evaluations at least 60 days apart; or
  - 2. Serum albumin of 3.0 g/dL or less, present on at least two evaluations at least 60 days apart; or
  - 3. Clinically documented tender abdominal mass palpable on physical examination with abdominal pain or cramping that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or
  - 4. Perineal disease with a draining abscess or fistula, with pain that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or
  - 5. Involuntary weight loss of at least 10 percent from baseline, as computed in pounds, kilograms, or BMI, present on at least two evaluations at least 60 days apart; or
  - 6. Need for supplemental daily enteral nutrition via a gastrostomy or daily parenteral nutrition via a central venous catheter.

As indicated in Section II(A), above, Mr. Q had a number of abdominal studies and at least one abdominal surgery over a 10 year period. However, the medical records do not tie Mr. Q's abdominal pain to any of the specific "A" or "B" criteria of Listing §5.06. Accordingly, Mr. Q's abdominal pain does not satisfy the specific criteria of the SSA's applicable Listing.

b. Mr. Q's Asthma<sup>77</sup>

The Social Security disability system classifies asthma under the Respiratory Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 3.03. Listing § 3.03's requirements for a finding of disability due to asthma are as follows:

- A. Chronic asthmatic bronchitis. Evaluate under the criteria for chronic obstructive pulmonary disease in 3.02A;<sup>78</sup> OR
- B. Attacks (as defined in 3.00C), in spite of prescribed treatment and requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each in-patient hospitalization for longer than 24 hours for control of asthma counts as two attacks, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of attacks.

There is no question that Mr. Q has asthma. However, the evidence in the record demonstrates that Mr. Q's asthma symptoms are not severe enough to satisfy either the "A" or "B" criteria of Listing §3.03. Accordingly, Mr. Q's asthma does not satisfy the specific criteria of the SSA's applicable Listing.

c. Mr. Q's Back and Neck Pain

The Social Security disability system classifies Mr. Q's back and neck pain / degenerative disk disease under the Musculoskeletal Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.00 *et. seq.* Section 1.04 requires in relevant part as follows:

1.04 Disorders of the spine (e.g., . . . osteoarthritis, degenerative disc disease, facet arthritis . . . ), resulting in compromise of a nerve root . . . or the spinal cord. With:

- A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or
- B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or

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<sup>77</sup> The Division did not concede that Mr. Q's asthma satisfied the Step 2 severity or durational requirements. Mr. Q's asthma is considered here (at Step 3) to demonstrate that, even assuming that Mr. Q's asthma satisfies the Step 2 severity and durational requirements, it does not satisfy the SSA Listing's criteria at Step 3, and therefore would not qualify Mr. Q for Interim Assistance benefits.

<sup>78</sup> In order to satisfy the criteria under Section 3.03(A) it is necessary to satisfy the criteria of Section 3.02(A), which is incorporated by reference. Section 3.02(A) requires a finding of "chronic obstructive pulmonary disease, due to any cause, with the FEV [forced expiratory volume] equal to or less than the values specified in table I [of Section 3.02]."

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

The evidence in the record indicates that Mr. Q's back and neck pain / degenerative disk disease satisfies *one* of the criteria of Section 1.04A (Mr. Q has some limitation of motion of the spine). However, there is no medical evidence of compromise of a nerve root, nerve root compression, muscle atrophy, reflex loss, or positive result on a straight-leg raising test. Similarly, with regard to Section 1.04B, there is no medical evidence of spinal arachnoiditis. Finally, with regard to Section 1.04C, there is no evidence of lumbar spinal stenosis or an inability to walk. Accordingly, Mr. Q's back and neck pain / degenerative disk disease does not satisfy the specific criteria of the SSA's applicable Listing.

d. Mr. Q's Chest Pain<sup>79</sup>

Categorizing Mr. Q's chest pain under the SSA Listings is problematic because radiological studies never determined any physiological basis for this pain. The Social Security Administration's current Listings do not contain any listing for general pain or uncategorized pain. A separate listing for pain has been considered by SSA,<sup>80</sup> but to date no such listing has been created. Accordingly, at this time there is no SSA Listing to which Mr. Q's chest pain can be compared.

e. Mr. Q's Joint Pain (Shoulder and Hip Pain)

The Social Security disability system classifies Mr. Q's joint pain (shoulder and hip pain) under the Musculoskeletal Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.02. Section 1.02 requires in relevant part as follows:

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b; or

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<sup>79</sup> The Division did not concede that Mr. Q's chest pain satisfied the Step 2 severity or durational requirements. Mr. Q's chest pain is considered here (at Step 3) to demonstrate that, even assuming that Mr. Q's chest pain satisfies the Step 2 severity and durational requirements, it does not satisfy the SSA Listing's criteria at Step 3, and therefore would not qualify Mr. Q for Interim Assistance benefits.

<sup>80</sup> See Social Security Bulletin, January 1987, Vol. 50, No. 1, available online at <http://www.ssa.gov/policy/docs/ssb/v50n1/v50n1p13.pdf> (date accessed October 8, 2012).

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

With regard to Mr. Q's hip pain, there is no evidence in the record indicating that, as a result of this pain, he is unable to ambulate effectively as defined by Listing Section 1.00(B)(2)(b).<sup>81</sup> Rather, the fact that Mr. Q continues to work as an apartment manager shows that he *can* ambulate effectively. Accordingly, Mr. Q's hip pain does not meet or equal the "inability to ambulate" requirements of Listing 1.02A.

With regard to Mr. Q's shoulder pain, there is no evidence in the record indicating that he is unable to effectively perform fine and gross movements.<sup>82</sup> Again, the fact that Mr. Q continues to be able to perform the labor required of him as an apartment manager shows that he can still effectively perform at least gross movements with his arms. Accordingly, Mr. Q's shoulder and hip pain / degenerative joint disease do not satisfy the specific criteria of the SSA's applicable Listing.

#### **IV. Conclusion**

Mr. Q did not meet his burden of proving, by a preponderance of the evidence, that he is likely to be found disabled by the SSA. Because the preponderance of the evidence shows that Mr.

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<sup>81</sup> Listing Section 1.00(B)(2)(b), titled "What We Mean by Inability to Ambulate Effectively," provides in relevant part as follows:

(1) Definition. Inability to ambulate effectively means an extreme limitation of the ability to walk . . . . Ineffective ambulation is defined generally as having insufficient lower extremity functioning . . . to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities . . . .

(2) To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living . . . . [E]xamples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail....

<sup>82</sup> Listing Section 1.00(B)(2)(c), titled "What we mean by inability to perform fine and gross movements effectively," provides in relevant part as follows:

Inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities . . . . To use their upper extremities effectively, individuals must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. Therefore, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level.

Q does not satisfy Step 3 of the SSA disability determination process (in that he does not meet or equal the SSA listings with regard to his impairments), he does not qualify for Interim Assistance.

**V. Decision**

Mr. Q did not prove that he is likely to be found disabled by the Social Security Administration due to his physical impairments. As a result, the Division's decision denying Mr. Q's application for Interim Assistance is AFFIRMED.

DATED this 10<sup>th</sup> day of October, 2012.

*Signed*  
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Jay D. Durych  
Administrative Law Judge

**Adoption**

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 22<sup>nd</sup> day of October, 2012.

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

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

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