

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

In the Matter of)	
)	OAH No. 12-0601-APA
V H. A)	Former OHA Case No.
_____)	DPA Case No.

DECISION

I. Introduction

V A applied for Interim Assistance benefits.¹ The Division of Public Assistance (DPA or Division) denied Mr. A's application based on its review of his medical records.² On March 22, 2012, Mr. A requested a hearing to appeal that decision.³

Mr. A's hearing was held on May 9, 2012. Mr. A participated in the hearing by phone, represented himself, and testified on his own behalf. Public Assistance Analyst Terri Gagne attended the hearing in person, represented the Division, and testified on its behalf. The DPA's medical reviewer, Laura Ladner, participated in the hearing by phone and testified on behalf of the Division. All testimony and exhibits submitted were admitted into evidence.

This decision finds, based on the testimony and medical records presented at the hearing, that Mr. A can still perform his prior work as a copywriter, as well as other sedentary work. Accordingly, Mr. A has not met his burden of proving that he is likely to be found disabled, and he is not entitled to Interim Assistance benefits.

II. Facts⁴

Mr. A is 40 years old.⁵ On August 15, 2011 Mr. A was seen by a physician at the No Name Community Health Center for knee pain.⁶ An MRI revealed that Mr. A had severe degeneration of the bone and cartilage in his left knee; the radiologist stated that Mr. A's knee was in worse condition than "many 70+ year old patients."⁷ Mr. A was referred to an

¹ His application does not appear to be in the record, but there is no dispute that he did apply.
² Exhibit 3.0.
³ Exhibit 4.
⁴ Unless otherwise noted, the factual findings are based on Mr. A's testimony.
⁵ Exhibit 1.
⁶ Exhibit 2.40.
⁷ Exhibit 2.43.

orthopedic surgeon, who diagnosed him with severe degenerative arthritis in his left knee.⁸ The surgeon noted that Mr. A walked with a limp.

Mr. A originally intended to get knee replacement surgery in February of 2012. He had hoped to earn enough money to pay for this surgery by fishing for crab, but when he attempted to participate in that fishery, he found he was no longer able to perform that type of heavy physical work. Mr. A lasted only four days out of a season that lasts for several months. Because he is unemployed and does not have access to health insurance benefits, Mr. A has to date been unable to afford knee surgery.

Mr. A testified that both of his knees are bad, but that the left one is completely “trashed.” He noted that he is able to take care of his daily living activities and move around because he is fairly athletic, he takes narcotics to ease his pain, and he tries not to show the pain he is in.

Mr. A has a college education with a bachelor's degree, and is also a certified welder. He worked as a copywriter for an advertising agency from 1997 - 2001. He worked as a commercial tile installer from 2001 - 2003. His most recent work was as a deckhand on a commercial fishing vessel from 2003 - 2010. Mr. A testified that he can no longer work as a tile installer, welder, or commercial fisherman because of his knee pain and lack of mobility. Mr. A agreed, however, that he could still work as a copywriter if that type of work were available.⁹

III. Discussion

A. Introduction

Interim Assistance is a benefit available to individuals while they are waiting for the Social Security Administration (SSA) to approve their application for Supplemental Security Income (SSI).¹⁰ Among other requirements, to receive Interim Assistance an applicant must be “likely to be found disabled by the Social Security Administration.”¹¹ Mr. A has the burden of proving that he is likely to be found disabled by the SSA.¹²

⁸ Exhibit 2.23.

⁹ All facts in preceding paragraph from Exhibits 2.7 - 2.11 and A hearing testimony.

¹⁰ 7 AAC 40.170(b); 7 AAC 40.375.

¹¹ 7 AAC 40.180(b)(1).

¹² 2 AAC 64.290(e).

The SSA uses a five-step evaluation process in making its disability determinations.¹³ Each step is considered in order, and if the SSA finds the applicant disabled at any step, it does not go on to consider subsequent steps.¹⁴

The first step in the SSI disability determination process looks at the applicant's current work activity. If the applicant is performing "substantial gainful activity," the SSA will find that the applicant is not disabled.¹⁵ This finding is made regardless of the applicants' medical condition, age, education, or work experience.¹⁶

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."¹⁷ 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.¹⁸ In order to be considered severe, the impairment or combination of impairments must also be expected to result in death or must have lasted or be expected to last at least 12 months.¹⁹ If the impairment is not severe under this definition, then the applicant is not disabled.

At step three, the SSA determines whether the applicant's severe impairment meets or medically equals the criteria contained in the SSA's "Listing of Impairments."²⁰ If it does, the applicant is considered disabled.²¹

For applicants who are not determined to be disabled at step three, the SSA goes on to step four and looks at the applicant's ability to perform past relevant work.²² If the applicant is able to perform his or her past relevant work, the applicant is not disabled.

¹³ 20 CFR §416.920. This process is described in detail in OHA Case No 11-FH-134 (Dep't of Health and Social Services 2011), at 14-17(<http://aws.state.ak.us/officeofadminhearings/Documents/HSS/11-FH-134.pdf>).

¹⁴ 20 CFR §416.920(a)(4).

¹⁵ 20 CFR §416.920(a)(4)(i).

¹⁶ 20 CFR §416.920(b).

¹⁷ 20 CFR § 416.920(c); 20 CFR § 416.921(a).

¹⁸ 20 CFR § 416.908.

¹⁹ 20 CFR § 416.920(a)(4)(ii); 20 CFR §416.909.

²⁰ See 20 CFR § 404, Subpart P, Appendix 1 (hereafter "Appendix 1").

²¹ 20 CFR § 416.920(a)(4)(iii).

²² 20 CFR § 416.920(a)(4)(iv).

Finally, at step five, the SSA looks at the applicant's age, education, and work experience to determine whether the applicant can perform other work in the national economy.²³

B. 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."²⁴ Mr. A testified that he is not currently working, and the Division did not dispute this. Accordingly, Mr. A has proven that he is not currently engaged in substantial gainful activity and has satisfied Step 1 of the analysis.

C. Step 2 - Are the Severity and Durational Requirements Satisfied?

The Division agrees that Mr. A's knee problems constitute a severe impairment. Ms. Ladner testified, however, that Mr. A's knee problems do not satisfy the 12 month durational requirement. Mr. A's doctor had reported in January of 2012 that Mr. A was expected to have surgery in February 2012 and that he would regain knee motion and function after a period of physical therapy and rehabilitation.²⁵ This doctor's report also stated that he would recover in about 6 months.²⁶

The SSA's durational regulation states:

Unless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement.^[27]

Ms. Ladner testified that with surgery in February and a six month recovery period, Mr. A would no longer be impaired in August of 2012. However, Mr. A's condition did not begin in February. He had his diagnostic MRI on August 15, 2011. Accordingly, depending on when in August he would be expected to recovery, his impairment might or might not have met this durational requirement. For example, if his surgery was on February 20, his six month recovery period would last through August 20, 2012, which is slightly longer than 12 months. On the other hand, if his surgery was on February 1, the six month recovery period would end on August 1, a few days short of the 12 month durational requirement.

As it has turned out, however, Mr. A did not have knee replacement surgery. His knee impairment has continued at least through the date of his hearing on May 9, 2012.

²³ 20 CFR § 416.920(a)(4)(v).

²⁴ 20 CFR § 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.

²⁵ Exhibit 2.6.

²⁶ *Id.*

²⁷ 20 CFR § 416.909.

Even if he had surgery the next day, with a six month recovery period his condition would be expected to last from August 2011 through some time in November of 2012. This is a continuous period of more than 12 months. Accordingly, Mr. A has satisfied the 12 month durational requirement.

D. Step 3 - Does the Applicant "Meet the Listing?"

The next step in the analysis is to determine whether the applicant's severe impairment meets the criteria of the listing of impairments contained in the SSA's regulations at 20 CFR Part 404, Subpart P, Appendix 1 ("the listings"). The applicant bears the burden of establishing that his or her impairment satisfies the requirements of a "listings" impairment.²⁸ To meet a listing, an impairment must meet *all* of the listing's specified criteria; an impairment that manifests only some of these criteria, no matter how severely, does not qualify.²⁹

Mr. A's primary impairment has been described both as "severe degenerative arthritis" of the left knee³⁰ and as "internal derangement" of the left knee.³¹ The Social Security disability system classifies arthritis under Listing 14.09. However, Listing § 14.09(e)(iv) instructs that, if both inflammation and chronic deformities are present, Mr. A's impairment should be evaluated under the criteria of the SSA's musculoskeletal system listing. Mr. A's left knee has chronic bony deformities. Accordingly, his knee problem should be analyzed under the SSA's listing for the musculoskeletal system (Listing § 1.00 et. seq.). Listing § 1.02 provides in relevant part:

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

The medical evidence pertaining to Mr. A's left knee may or may not satisfy the criteria contained in the first six lines of Section 1.02; this is difficult to determine without medical

²⁸ *Tackett v. Apfel*, 180 F.3d 1094, 1098-1099 (9th Cir.1999); *Sullivan v. Zebley*, 493 U.S. 521, 530-531 (1990).

²⁹ *Sullivan, supra*, 493 U.S. at 530.

³⁰ Exhibit 2.23.

³¹ Exhibits 2.4, 2.6, 2.41, 2.47, 2.53.

expertise. However, Mr. A's functional limitations are not severe enough to satisfy the requirements of Section 1.02(A) (quoted above). Section 1.02(A) requires that the joint problem result in an “inability to ambulate effectively, as defined in [Section] 1.00B2b.” That regulation (20 CFR Part 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)) defines the ability to ambulate effectively as follows:

(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. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples 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. The ability to walk independently about one’s home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

Mr. A's ability to walk is clearly impaired; doctors have noted that he walks with a limp.

However, based on his testimony, Mr. A is able to walk despite the pain in his knee.

Accordingly, Mr. A does not have “an extreme limitation of the ability to walk” as defined by 20 CFR Part 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b). Because Mr. A has not established “an extreme limitation of the ability to walk,” he does not meet or medically equal the applicable criteria for the musculoskeletal category of the SSA's Listing of Impairments. It is therefore necessary to proceed to the fourth step in the disability analysis and to determine whether Mr. A's impairment prevents him from performing his prior work.

E. Step 4 - Can the Applicant Perform his Prior Relevant Work?

The next step is to determine whether Mr. A’s impairments prevent him from performing his past relevant work. “Past relevant work” is defined as “work that [the applicant has] done within the past 15 years, that was substantial gainful activity, and that lasted long enough for [the applicant] to learn to do it.”³² If the applicant is not prevented from performing his previous relevant work, he is not disabled.³³

Mr. A agreed that even with his knee impairment, he could perform his prior work as a copywriter. Copywriting work may not exist in No Name where Mr. A now lives.

³² 7 CFR § 416.960(b)(1).

³³ 20 CFR § 416.920(a)(4)(iv); 20 CFR § 416.960(b)(2-3).

However, under the SSA regulations, the ability to return to past work is not dependent on whether that work exists in the applicant's local community.

Further, even if Mr. A could not return to his past work as a copywriter because copywriting work had somehow disappeared from the national economy, Mr. A's ability to perform that work shows that he is able to perform other sedentary work. Given his relatively young age, and his relatively high level of education, he would also be found not to be disabled at step five of the five step analysis.³⁴

IV. Conclusion

Mr. A is not currently engaged in substantial gainful activity, and he has a severe impairment which is expected to last for a continuous period of at least 12 months. However, his impairment does not satisfy the specific criteria of the SSA's applicable listing, and despite his impairment Mr. A is still capable of performing his prior copywriting work. Under the SSA's regulations, it does not matter whether such work is actually available in No Name. Accordingly, Mr. A is not disabled according to SSA regulations, and is thus not entitled to receive Interim Assistance benefits. The Division's decision denying Mr. A's application for Interim Assistance is therefore affirmed.

Dated this 10th day of August, 2012.

Signed

Jay Durych
Administrative Law Judge

³⁴ At step 5 the Social Security Administration would apply its Medical-Vocational Guidelines, located at 20 CFR, Part 404, Subpart P, Appendix 2, to determine whether Mr. A can perform sedentary work. These guidelines, known as "the Grids," are fact-based generalizations about the availability of jobs for people of varying ages, educational backgrounds, and previous work experience, with differing degrees of exertional impairment. *Holley v. Massanari*, 253 F.3d 1088, 1093 (8th Cir. 2001). The Grids "are used to evaluate the claimant's age, education, past work experience, and RFC [residual functional capacity] in order to determine whether that claimant is disabled." *Poole v. Astrue*, 2010 WL 2231873 (W. D. Ark. 2010).

The SSA would evaluate Mr. A under Rule 201 of "the Grids" ("Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s)"). The specific sub-rules that would apply are Rules 201.27, 201.28, or 201.29. Under each of these rules, if any of Mr. A's prior jobs are considered to have involved skilled or semi-skilled work, he is deemed *not* to be disabled.

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 21st day of August, 2012.

By: Jay D. Durych

Title/Agency: ALJ, OAH, DOA

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