



Ms. K had C5-6, C6-7 discectomy and fusion surgery performed on July 11, 2011.<sup>10</sup> She initially had a good response and then her neck and right shoulder pain returned.<sup>11</sup> Ms. K stated that she experiences incontinence, that she cannot sit for even a half hour at a time, and that even moving a computer mouse causes her severe neck pain.<sup>12</sup>

Ms. K applied for Interim Assistance on March 5, 2012.<sup>13</sup> Her application was supported by a March 14, 2012 “Preliminary Examination for Interim Assistance” form which was completed by Sean Taylor, M.D. That form stated her diagnosis was “chronic neck pain with right upper extremity radiation” post fusion of C5 – 6 and C 6 – 7, and that it would take her 12 months or longer to recover.<sup>14</sup> Dr. Taylor’s March 14, 2012 examination notes state that Ms. K has neck pain with any movement of her cervical spine, and “a reduced range of motion of the cervical spine in all planes.” Dr. Taylor’s notes conclude that she experiences “chronic neck pain with right upper extremity referral,” that she would not be able to work in her previous jobs as a dog kennel cleaner or hairdresser, that she avoid work requiring “repetitive use of the upper extremities overhead” and recommended she consider retraining in sedentary work.<sup>15</sup>

Ms. K has had several post-surgery MRIs. Her October 6, 2011 MRI results stated that she had a bulging disc at C4 – 5, with mild spinal stenosis<sup>16</sup> at C5- 5 and C6 – 7.<sup>17</sup> The January 17, 2012 MRI showed a “slight further increase of stenosis.”<sup>18</sup> Her most recent MRI, dated June 6, 2012, shows that her spinal stenosis has not increased since January 2012.<sup>19</sup>

Ms. K has a history of anxiety, depression, posttraumatic stress disorder, obsessive compulsive disorder, and agoraphobia.<sup>20</sup> Her medical records from October 4, 2011 through February 14, 2012 consistently contain a depression diagnosis.<sup>21</sup> Her February 14, 2012 medical records also contain a diagnosis of an anxiety disorder.<sup>22</sup> Ms. K stated that she does not like going out in public, that she does

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<sup>10</sup> Ex. 2.30.

<sup>11</sup> Ex. 2.11.

<sup>12</sup> K testimony.

<sup>13</sup> Ex. 1.

<sup>14</sup> Exs. 2. 3 – 2.4.

<sup>15</sup> Exs. 2.11 – 2.14.

<sup>16</sup> Spinal stenosis is the “[n]arrowing of the vertebral canal, nerve root canals, or intervertebral foramina of the lumbar spine.” *Dorland’s Illustrated Medical Dictionary* 1795 (31<sup>st</sup> ed. 2007).

<sup>17</sup> Ex. 2.33.

<sup>18</sup> Ex. 2.19.

<sup>19</sup> Ex. A, p. 14.

<sup>20</sup> Exs. 2.4, 2.2.

<sup>21</sup> Exs. 2.46, 2.49, 2.52, 2.58, 2.61, 2.64, 2.115, 2.116.

<sup>22</sup> Ex. 2.116.

not want people around her, and that she currently has suicidal thoughts but no recent attempts.<sup>23</sup> However, her medical records are lacking any description of symptomology, other than that her symptoms are moderate, and that she is neither suicidal nor experiencing hallucinations.<sup>24</sup> She is currently prescribed Zoloft, Seroquel, and Valium.<sup>25</sup>

Laura Ladner, the Agency’s medical reviewer, determined that Ms. K’s application should be denied because she was capable of performing sedentary work.<sup>26</sup> In making her decision, Ms. Ladner agreed that Ms. K’s spinal and knee conditions were severe physical impairments that met the duration requirement. She, however, stated that Ms. K’s severe physical impairments did not meet or equal the applicable Social Security Musculoskeletal listings, and that while Ms. K was not capable of her previous relevant work, she was not disabled using the Social Security medical vocational rules.<sup>27</sup>

Ms. Ladner also determined that Ms. K’s mental health conditions did not qualify her as disabled, due to the lack of adequate information. She looked at the Social Security mental health listings and determined that Ms. K only had mild mental health limitations.<sup>28</sup>

### **III. Discussion**

#### ***A. The Five Step Disability Determination Process***

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”<sup>29</sup> Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income benefits.<sup>30</sup> Once an applicant is approved for federal Supplemental Security Benefits, he or she is then eligible to receive Adult Public Assistance benefits.<sup>31</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>32</sup>

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<sup>23</sup> K testimony.

<sup>24</sup> Exs. 2.46, 2.49, 2.52, 2.58, 2.61, 2.64, 2.115, 2.116.

<sup>25</sup> K testimony.

<sup>26</sup> Ex. 2.1.

<sup>27</sup> Ladner testimony.

<sup>28</sup> Ladner testimony.

<sup>29</sup> AS 47.25.430.

<sup>30</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>31</sup> 7 AAC 40.030(a); 7 AAC 40.170(a).

<sup>32</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>33</sup> An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.<sup>34</sup>

The SSA uses a five-step evaluation process in making its disability determinations.<sup>35</sup> Each step is considered in order, and if the SSA finds the applicant either disabled or not disabled at any step, it does not consider subsequent steps.<sup>36</sup> The first step in this process looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the SSA will find the applicant is not disabled.<sup>37</sup>

At step two, the SSA considers the severity and duration of the applicant’s impairment. The applicable regulation requires more than an applicant’s statement of symptoms to establish an impairment; medical evidence is required.<sup>38</sup> In order to be considered disabled, the impairment or combination of impairments must be severe<sup>39</sup> and must be expected to result in death or must have lasted or be expected to last at least 12 months.<sup>40</sup> If the impairment is not severe or does not meet the duration requirement, then the applicant is not disabled.

At step three, the SSA looks at whether the impairment meets or equals one of the listings adopted by the SSA.<sup>41</sup> If it does, the applicant is disabled and the SSA does not look at steps four and five.<sup>42</sup>

At step four, which applies to applicants determined not to be disabled at step three, the SSA looks at the applicant’s capacity for work and past relevant work. If the applicant is able to perform his or her past relevant work, the applicant is not disabled.<sup>43</sup> If the applicant is unable to perform his or her past relevant work, it is necessary to proceed to step five.

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<sup>33</sup> 7 AAC 40.180(b)(1).

<sup>34</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 Comm’n*, 711 P.2d 1170, 1179 n. 14 (Alaska 1986).

<sup>35</sup> 20 C.F.R. § 416.920

<sup>36</sup> 20 C.F.R. § 416.920(a)(4).

<sup>37</sup> 20 C.F.R. § 416.920(a)(4)(i).

<sup>38</sup> 20 C.F.R. § 416.908.

<sup>39</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>40</sup> 20 C.F.R. § 416.920(a)(4)(ii); 20 C.F.R. § 416.909.

<sup>41</sup> See 20 C.F.R.Pt. 404, Subpart P, Appendix 1 (hereafter “Appendix 1”).

<sup>42</sup> 20 C.F.R. § 416.920(a)(4)(iii) and (d).

<sup>43</sup> 20 C.F.R. § 416.920(a)(4)(iv).

Step five requires an answer to the question of whether the applicant is capable of performing other work. Answering this question requires the application of the Social Security medical vocational guidelines that include the evaluation of the applicant's residual functional capacity, age, education, English literacy, and previous work experience.<sup>44</sup> If the applicant is not capable of performing other work, he or she is disabled.<sup>45</sup>

***B. Application of the Five Step Process***

The Agency agrees that Ms. K is not currently engaged in substantial gainful activity. This means that she satisfies step one of the five step disability process.

Ms. K presented both mental and physical impairments.

1. Mental Impairments.

Ms. K has current diagnoses of depression and an anxiety disorder. The Agency argued that Ms. K was only mildly limited with regard to her mental health conditions, *i.e.*, her mental health conditions did not satisfy step two, the severity requirement.

The Agency's argument with regard to Ms. K's mental health impairments is persuasive. In order for a mental health impairment to be classified as severe, the applicant must be at least moderately affected in the functional areas of activities of daily living, social functioning, and concentration, persistence, or pace, and experience at least one episode of decompensation.<sup>46</sup> Although Ms. K testified regarding her mental health impairments and how they affected her functioning, the very limited medical evidence indicates that her symptoms are moderate, without any description of her actual symptoms, and that she is not suicidal and does not have hallucinations. There was no evidence of current episodes of decompensation.

Medical evidence, not merely an applicant's statement of symptoms, is required to establish disability.<sup>47</sup> Because there is little medical evidence regarding Ms. K's mental health impairments and no evidence of any current episodes of decompensation, Ms. K has not met her burden of proving that her mental health impairments are severe. Consequently, she does not satisfy step two of the five step disability process with regard to her mental health impairments. As a result, she does not appear likely to meet the Social Security Administration's criteria for disability with regard to her mental impairments, and does not qualify for Interim Assistance based upon her mental impairments.

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<sup>44</sup> See 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 201.

<sup>45</sup> 20 C.F.R. § 416.920(a)(4)(v).

<sup>46</sup> 20 C.F.R. § 416.920a(d)(1).

<sup>47</sup> See 20 C.F.R. § 416.929(a) and (b).

## 2. Physical Impairments.

Ms. K presents two physical impairments, spinal and knee. The Agency agrees that these impairments are both severe and satisfy the duration requirements. Ms. K therefore satisfies step two of the five step disability process.

In order to satisfy step three, Ms. K must meet or equal the SSA medical listings. Her spinal and knee impairments fall in the SSA medical listing musculoskeletal category.<sup>48</sup> In order for Mr. Sanders to meet or medically equal the criteria set out in the musculoskeletal listing, she must have “an extreme limitation of the ability to walk” or “an extreme loss of function of both upper extremities.”<sup>49</sup>

In order for Ms. K to have “an extreme limitation of the ability to walk,” she must not be able to walk without the use of a walker, two crutches, or two canes, or be unable to walk for one block.<sup>50</sup> There is no medical evidence demonstrating that Ms. K’s ability to walk is extremely limited: she uses one cane, not two, and she stated she could walk a distance of three to four blocks.

The medical evidence regarding the use of her upper extremities is that she has limitations on overhead use of her right upper extremity. However, there is no medical evidence that she has “an extreme loss of function of both upper extremities.” As a result, Ms. K does not meet or equal the listing for the musculoskeletal category. Because Ms. K does not satisfy step three, it is necessary to move on to step four.

In order to satisfy step four, Ms. K must be unable to perform her past relevant work. The Agency agreed that Ms. K could not physically perform her previous relevant work. Consequently, Ms. K satisfies step four. It is therefore necessary to proceed to step five.

In order to qualify as disabled under step five, Ms. K must be unable to perform any other work.<sup>51</sup> At this point, the burden shifts to the SSA to demonstrate that an applicant is capable of performing other work. The SSA uses the medical vocational guidelines to determine disability at this step when an applicant’s limitations, including those imposed by pain, are exertional in nature.<sup>52</sup>

The Agency opined that Ms. K could perform sedentary work. The SSA defines sedentary work as follows:

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a

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<sup>48</sup> See 20 C.F.R. § Pt 404, Subpart P, Appendix 1, § 1.00.

<sup>49</sup> 20 C.F.R. § Pt 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1) and 1.00(B)(2)(c).

<sup>50</sup> 20 C.F.R. § Pt 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1).

<sup>51</sup> 20 C.F.R. § 416.920(a)(4)(v).

<sup>52</sup> See 20 C.F.R. § 416.969a(b).

sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.<sup>[53]</sup>

Ms. K testified that she could not sit for longer than a half hour, and that she could not even move a computer mouse without it causing her great pain. While the doctor who examined her on March 14, 2012 stated she had neck pain when moving her cervical spine, he did not indicate that her pain was of such a nature to limit her ability to sit, stand, walk, or lift items.<sup>54</sup> Her testimony is not supported by other medical evidence in the record. The only limitation contained in Ms. K's medical records in evidence is that she could not perform repetitive overhead use of her upper extremities.<sup>55</sup> The medical evidence in the record therefore shows that Ms. K is capable of performing sedentary work as defined by the SSA. This conclusion is corroborated by the doctor who examined her on March 14, 2012 who recommended that she consider retraining for a sedentary job, so he apparently felt she was capable of performing sedentary work.<sup>56</sup>

The SSA medical vocational guidelines for an English literate individual in the 18 - 44 age range, who is limited to sedentary work, with a high school education, who has a range of work experience from unskilled to skilled, regardless of whether those skills are transferable, direct a conclusion that the applicant is not disabled.<sup>57</sup>

Ms. K is 42 years old. She is literate in English and has a GED. Because she is capable of sedentary work, she falls under the medical vocational rules, which mandate a conclusion that she is not disabled.<sup>58</sup>

#### **IV. Conclusion**

Ms. K has severe physical impairments that limit her ability to work. However, she is capable of performing work at the sedentary level. She is therefore not likely to meet the Social Security Administration's criteria for disability. As a result, the Agency's decision to deny her application for

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<sup>53</sup> 20 C.F.R. § 416.967(a).

<sup>54</sup> See Exs. 2.11 – 2.14.

<sup>55</sup> Exs. 2.11 – 2.14.

<sup>56</sup> See Exs. 2.11 – 2.14.

<sup>57</sup> 20 C.F.R. § Pt. 404, Subpt. P, App. 2, § 201.27 – 29.

<sup>58</sup> See 20 C.F.R. § Pt. 404, Subpt. P, App. 2, § 201.27 – 29.

Interim Assistance benefits is AFFIRMED.

DATED this 10th day of August, 2012.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
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 21<sup>st</sup> day of August, 2012.

By: *Signed* \_\_\_\_\_  
Name: Lawrence A. Pederson  
Title: Administrative Law Judge

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