



Dr. Benjamin, M.D. That form stated his diagnoses were laxity of the metacarpophalangeal<sup>6</sup> joint, right thumb instability, and a left shoulder rotator cuff tear with decreased motion. The form further stated that he was expected to recover from his conditions within six months, and that he may need surgery.<sup>7</sup> Laura Ladner, the Division’s medical reviewer, determined that Mr. T’s application should be denied because his “condition is not expected to remain at the current level of severity for greater than 2 months with treatment.”<sup>8</sup> The Division then denied his application on March 16, 2012.<sup>9</sup>

Mr. T is 48 years old. He is literate in the English language. He has an 11<sup>th</sup> grade education; he does not have a GED. His work history consists of physical work; his most recent employment was as a personal care attendant, which is physically demanding work.<sup>10</sup> He is right handed.<sup>11</sup>

Mr. T has a history of right shoulder dislocations, which date back to at least 2005.<sup>12</sup> His most recent right shoulder dislocation occurred on January 2, 2012.<sup>13</sup> He was injured in a motor vehicle accident on February 9, 2011,<sup>14</sup> which fractured his sternum, ribs, and clavicle, all of which required surgery. He has experienced left shoulder pain since the accident. He also has laxity of his right metacarpophalangeal joint, and is unable to fully extend his right thumb.<sup>15</sup>

CT scans taken on February 9, 2011 show that Mr. T has “mild to moderate spondylotic change and disc height loss [in the] lower cervical region” of his spine, prior fractures of the L2 and L3 vertebrae, and a pars defect at L5.<sup>16</sup>

On December 1, 2011, Dr. Benjamin stated in a “Medical Report on Incapacity” that Mr. T was incapacitated, due to severe shoulder pain (rotator cuff tear) and inability to use his right thumb, that the date of onset was February 2011, and that it was unknown how long his incapacity was expected to continue.<sup>17</sup> Dr. Benjamin saw Mr. T on December 8, 2011. His notes stated that Mr. T experienced the following with regard to his left shoulder: pain with any shoulder motion, limited forward flexion, and

---

<sup>6</sup> The metacarpus is ‘the part of the hand between the wrist and the fingers, its skeleton being five cylindrical bones (metacarpals) extending from the carpus to the phalanges.’ *Dorland’s Illustrated Medical Dictionary* 1160 (31<sup>st</sup> Edition 2007).

<sup>7</sup> Exs. 2.5 – 2.6.

<sup>8</sup> Ex. 2.1.

<sup>9</sup> Ex. 3.

<sup>10</sup> Exs. 2.7 – 2.11; T testimony.

<sup>11</sup> T testimony.

<sup>12</sup> Ex. 2.14.

<sup>13</sup> Exs 2.17.

<sup>14</sup> Ex. 2.43.

<sup>15</sup> Ex. 2.14.

<sup>16</sup> Exs. 2.83, 2.86.

<sup>17</sup> Ex. 2.13.

limited rotation. He reviewed a recent MRI, which did not show a “full-thickness rotator cuff tear”, but which shows tendinitis of the rotator cuff, AC joint arthropathy, and an anterior acromion tear. His diagnosis was adhesive capsulitis of the left shoulder, with a need for physical therapy, and possible surgery.<sup>18</sup>

Ms. Ladner evaluated Mr. T’ condition, in pertinent part, as follows:

- a. She assumed that Mr. T was not working.
- b. His physical condition is severe; however, his shoulder conditions are not expected to meet the 12 month duration requirement.
- c. He will probably continue to have difficulty lifting heavy objects, so that he cannot return to his previous work as a personal care attendant.
- d. However, he is capable of performing sedentary work, and is not disabled based upon his age and education.

Mr. T testified as follows:

- a. He is deaf in his right ear. He does not use a hearing aid. He has not had a hearing test.
- b. He has severe back problems and foot pain, and that he can walk for approximately one-quarter mile, but that he needs to take a break halfway through due to foot and back pain. He does not use a cane for walking.
- c. He can stand for less than 15 minutes.
- d. During the course of the approximately 50 minute hearing, he could not sit constantly but had to get up and stand and stretch several times.
- d. He could lift 10 pounds, but he cannot bend over to pick something up off the floor.
- e. He has trouble grabbing and holding onto items with his right hand.
- f. He can dress and take care of himself, but it takes a while.
- g. His right shoulder dislocates very easily and he needs to be really careful with it.
- h. He has been receiving some mental health care and been prescribed several medications.

There are no medical documents in the record that contain any medically noted limitations on the Claimant’s ability to walk, stand, sit, or lift over a specified weight range, any reference to any diagnosed mental health conditions or their treatment, or any diagnosed deafness.

---

<sup>18</sup> Ex. 2.15.

### III. Discussion

#### A. Introduction

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”<sup>19</sup> Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income benefits.<sup>20</sup> Once an applicant is approved for federal Supplemental Security Benefits, he or she is then eligible to receive Adult Public Assistance benefits.<sup>21</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>22</sup>

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”<sup>23</sup> An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.<sup>24</sup>

The SSA uses a five-step evaluation process in making its disability determinations.<sup>25</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>26</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>27</sup>

At step two, the SSA considers 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>28</sup> In order to be considered disabled, the impairment or combination of impairments must be severe<sup>29</sup> and must be

---

<sup>19</sup> AS 47.25.430.

<sup>20</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>21</sup> 7 AAC 40.030(a); 7 AAC 40.170(a).

<sup>22</sup> 7 AAC 40.170(a) and (b); AS 47.25.455.

<sup>23</sup> 7 AAC 40.180(b)(1).

<sup>24</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>25</sup> 20 C.F.R. § 416.920

<sup>26</sup> 20 C.F.R. § 416.920(a)(4).

<sup>27</sup> 20 C.F.R. § 416.920(a)(4)(i).

<sup>28</sup> 20 C.F.R. § 416.908.

<sup>29</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).

expected to result in death or must have lasted or be expected to last at least 12 months.<sup>30</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>31</sup> If it does, the applicant is disabled and the SSA does not look at steps four and five.<sup>32</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>33</sup> If the applicant is unable to perform his or her past relevant work, it is necessary to proceed to step five.

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>34</sup> If the applicant is not capable of performing other work, he or she is disabled.<sup>35</sup>

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

The Division agrees that Mr. T is not currently engaged in substantial gainful activity. This means that he satisfies step one of the five step disability process. The Division also agrees that his physical impairment is severe, but denied his application at step two because its medical reviewer found that he did not meet the duration requirement.

In order to satisfy step two, Mr. T's severe impairment must have lasted or be expected to last for a continuous 12 month period.<sup>36</sup> The facts show that Mr. T was injured in an automobile accident in February 2011. Dr. Benjamin identified the date of onset for his left shoulder impairment and inability to use his right thumb as being February 2011.<sup>37</sup> Dr. Benjamin then stated on December 28, 2011, that his left shoulder and thumb impairments were expected to continue for six months.<sup>38</sup> The

---

<sup>30</sup> 20 C.F.R. § 416.920(a)(4)(ii); 20 C.F.R. § 416.909.

<sup>31</sup> See 20 C.F.R. Pt. 404, Subpart P, Appendix 1 (hereafter "Appendix 1).

<sup>32</sup> 20 C.F.R. § 416.920(a)(4)(iii) and (d).

<sup>33</sup> 20 C.F.R. § 416.920(a)(4)(iv).

<sup>34</sup> See 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 201.

<sup>35</sup> 20 C.F.R. § 416.920(a)(4)(v).

<sup>36</sup> 20 C.F.R. §416.909; see also, e.g., *Vendetti v. Rhode Island Dep't of Human Services*, No. 03-1126 (R.I. Super. Ct. 2003) (<http://statecasefiles.justia.com/documents/rhode-island/superior-court/03-1126.pdf>) (durational requirement may be met by a combination of prior and future disability).

<sup>37</sup> Ex. 2.13.

<sup>38</sup> Ex. 2.6.

period from February 2011 through the end of June 2012 (six months past December 28, 2011) encompasses a total of 17 months, which exceeds the 12 month durational requirement. As a result, Mr. T satisfies step two.

In order to satisfy step three, Mr. T must meet or equal the SSA medical listings. The Division did not venture an opinion regarding whether he met or equaled the SSA medical listings. Although Mr. T testified regarding deafness, foot pain, back problems, and mental health problems, there is no medical record in evidence demonstrating diagnosed hearing loss or mental health problems. His shoulder/hand problems, foot pain, and back problems<sup>39</sup> fall in the SSA medical listing musculoskeletal category.<sup>40</sup> In order for Mr. T to meet or medically equal the criteria set out in the musculoskeletal listing, he must have “an extreme limitation of the ability to walk” or “an extreme loss of function of both upper extremities.”<sup>41</sup>

There is no medical evidence demonstrating that Mr. T’ ability to walk is extremely limited. The medical evidence regarding the use of his upper extremities is that he has had repeated dislocations of his right shoulder, and that he has adhesive capsulitis of his left shoulder with reduced flexion and range of motion. He additionally is not able to use his right thumb. However, there is no medical evidence that he has “an extreme loss of function of both upper extremities.” As a result, Mr. T does not meet or equal the listing for the musculoskeletal category. Because Mr. T does not satisfy step three, it is necessary to move on to step four.

In order to satisfy step four, Mr. T must be unable to perform his past relevant work. The Division agreed that Mr. T could not perform his physically demanding past relevant work (personal care attendant) due to an inability to lift things. Consequently, Mr. T satisfies step four. It is therefore necessary to proceed to step five.

In order to qualify as disabled under step five, Mr. T must be unable to perform any other work.<sup>42</sup> The Division opined that he 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 sedentary job is defined as one which involves sitting, a certain amount of walking and

---

<sup>39</sup> See Exs. 2.83, 2.86.

<sup>40</sup> See 20 C.F.R. § Pt 404, Subpart P, Appendix 1, § 1.00.

<sup>41</sup> 20 C.F.R. § Pt 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1) and 1.00(B)(2)(c).

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

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>[43]</sup>

Mr. T testified that he could walk for a quarter mile, albeit with a break, that he could stand for less than 15 minutes, and that he had difficulty sitting for extended periods of time. However, the medical records in evidence do not indicate Mr. T is limited in his abilities to walk, stand, or sit. He does have limitations on his ability to lift, as agreed by the Division. However, there is no medical evidence in the record showing his lifting limitations. He did testify that he could lift 10 pounds. He does have documented problems with his right thumb, which he testified affected his ability to grab and hold onto items. However, medical evidence, not merely an applicant's statement of symptoms, is required to establish disability.<sup>44</sup> The medical evidence in the record fails to show that Mr. T is not capable of performing sedentary work as defined by the SSA.

The SSA medical vocational guidelines for an English literate individual in the 45 - 49 age range, who is limited to sedentary work, regardless of whether he has a high school diploma, 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>45</sup>

Mr. T is 48 years old. He is literate in English but does not have a high school diploma or GED. Because he is capable of sedentary work, he falls under the medical vocational rules, which mandate a conclusion that he is not disabled.<sup>46</sup>

#### **IV. Decision**

Mr. T did not meet his burden of proving that he is likely to meet the Social Security Administration's criteria for disability. As a result, the Division's decision to deny his application for Interim Assistance benefits is **AFFIRMED**.

DATED this 9th day of July, 2012.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

---

<sup>43</sup> 20 C.F.R. § 416.967(a).

<sup>44</sup> See 20 C.F.R. § 416.929(a) and (b).

<sup>45</sup> 20 C.F.R. § Pt. 404, Subpt. P, App. 2, § 201.18 - 22.

<sup>46</sup> See 20 C.F.R. § Pt. 404, Subpt. P, App. 2, § 201.18 - 22.

## 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 18<sup>th</sup> day of July, 2012.

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

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