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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-524
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

DECISION FOLLOWING REMAND
FROM DIVISION DIRECTOR

STATEMENT OF THE CASE

Introduction.

This Office issued its decision on January 29, 2010, 16 days after the last hearing held in the case. The decision found that the Claimant was not disabled according to the applicable criteria, and that the Division was therefore correct when on August 25, 2009 it denied the Claimant's application for Interim Assistance benefits submitted on or about July 17, 2009.

On March 5, 2010 the Division Director received from the Claimant an appeal of this Office's decision of January 29, 2010 (Ex. I). On April 15, 2010 the Division Director remanded the case to this Office with specific instructions (Exs. U-1, U-2). Those instructions were to issue a new decision considering certain new evidence and arguments (discussed below) not previously presented to this Office (Ex. U-1).¹

¹ The Director's decision indicated that it was served on the Claimant's counsel, the Division's counsel, and on this Office (Ex. U-2). The Director's decision authorized (but did not require) this Office to request briefing from the parties on the legal issue raised by the Claimant's counsel in his letter dated April 7, 2010 (Ex. T). Because the law on the issue raised by the Claimant's counsel is well established, this Office did not request further briefing from the parties.

Prior Procedural History.²

██████████ (Claimant) applied for Interim Assistance on July 17, 2009 (Ex. 1). The Division of Public Assistance (DPA or Division) denied her application on August 25, 2009 (Ex. 3). The Claimant requested a fair hearing contesting the denial on September 11, 2009 (Ex. 4.1).

Hearings were held on November 24, 2009 and January 13, 2010 before Hearing Officer Jay Durych. The Claimant participated by telephone in each hearing, represented herself, and testified on her own behalf. Public Assistance Analyst ██████████ appeared in person at each hearing to represent and testify on behalf of the Division. ██████████, another Public Assistance Analyst employed by the Division, observed the first hearing but did not testify. ██████████, a friend of the Claimant, participated briefly in the first hearing but did not represent the Claimant or present sworn testimony.

All testimony and exhibits submitted by the parties were admitted into evidence. At the end of the second hearing the record was closed and the case was submitted for decision.

This Office issued its decision on January 29, 2010, 16 days after the last hearing held in the case. The decision found that the Claimant was not disabled according to the applicable criteria, and that the Division was therefore correct when on August 25, 2009 it denied the Claimant's application for Interim Assistance benefits submitted on or about July 17, 2009.

The Claimant received her copy of the decision on February 3, 2010 (Ex. B). On March 8, 2010 this Office received from the Claimant two new medical opinions by the Claimant's physicians (Exs. C, D). This evidence had not previously been provided either to the Division or to this Office.

On March 5, 2010 the Division Director received the Claimant's appeal of this Office's decision of January 29, 2010 (Ex. I). The Claimant's appeal was denied by the Division Director on March 16, 2010 as not having been timely filed (Ex. I).

On April 7, 2010 the Division Director received a request for reconsideration of the March 16, 2010 order dismissing the Claimant's appeal due to untimeliness (Ex. K). On April 15, 2010 the Division Director remanded the case to this Office with instructions. Those instructions were to issue a new decision considering the additional evidence and arguments which had not previously been presented to this Office (Ex. U-1).³

² For a complete procedural history of this case prior to remand, see this Office's original decision at Findings of Fact, Paragraphs 31 – 36.

³ The additional evidence and arguments which the Director instructed this Office to consider were as follows (Ex. U-1):

Medical record from ██████████ Community Hospital dated February 1, 2010 (Ex. L).

Letter from ██████████, M.D. dated February 18, 2010 (Ex. D).

Letter from ██████████, M.D. dated March 1, 2010 (Ex. C).

Letter from ██████████, Esq. dated April 7, 2010 and legal authorities cited therein (Ex. T).

ISSUE

Does the Claimant qualify for Interim Assistance benefits, pursuant to 7 AAC 40.180, based on certain new evidence and/or legal arguments submitted to this Office after the original decision was issued in this case?

FINDINGS OF FACT⁴

The following facts were established by a preponderance of the evidence:⁵

I. Educational and Vocational History.

1. The Claimant was born on [REDACTED], 1964 (Ex. 2.0235) and was 45 years old at the time of the hearings held in this case (Claimant hearing testimony). She has a Graduation Equivalency Diploma (GED). *Id.* She can speak, understand, read, and write the English language. *Id.*
2. The Claimant worked at various fast food restaurants from her early teens through age 23 (Claimant testimony). She worked as a Certified Nursing Assistant for approximately 2 years. *Id.* She has worked as a liquor store clerk and a bartender. *Id.* She worked as a cook for approximately 10 years. *Id.* She has worked as a deck hand on a commercial fishing vessel for the last eight (8) years. *Id.* The Claimant's most recent work as a deck hand was heavy physical work. *Id.* The Claimant can no longer perform that work because of a knee problem. *Id.* She is not currently working. *Id.* She is currently homeless. *Id.*

II. Mental Impairments.⁶

3. The Claimant asserts a psychological impairment in this case (Claimant testimony). The Claimant's psychological impairment has been classified differently by various physicians at various times. However, the Claimant's psychological impairment may fairly be characterized as consisting of depression and bipolar disorder (both categorized under Social Security Administration (SSA) Impairment Listing No. 12.04), and anxiety, panic disorder, and post traumatic stress disorder (PTSD) (all three categorized under SSA Impairment Listing No. 12.06).
4. The Claimant has suffered from alcohol abuse problems since her teenage years (Claimant testimony; *see also* Exs. 2.0066, 2.0067, 2.0069, 2.0110, 2.0128, 2.0130, 2.0132, and 2.0214). However, as of the date of the second hearing (January 13, 2010), she had been sober for 60 consecutive days. *Id.*

⁴ All of the medical reports in the record (approximately 300 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.

⁵ The evidence submitted to this Office after the original decision was issued in this case is set forth in Paragraphs 5, 14, and 15 of these Findings of Fact.

⁶ The evidence regarding the Claimant's mental impairments was discussed in detail at Findings of Fact paragraphs 3 – 22 of this Office's original decision. Because the new evidence concerning the Claimant's *physical impairment*, (submitted after this Office's original decision was issued), is dispositive on remand, it is not necessary to discuss the Claimant's mental impairments in any detail in this decision.

5. After the original decision was issued in this case, this Office was provided a copy of a letter from board-certified psychiatrist [REDACTED], M.D. dated February 18, 2010 (Exs. D, N). This letter, prepared and submitted following the issuance of the original decision in this case, essentially reiterates, and adds nothing of substance to, Dr. [REDACTED]'s prior letter dated December 18, 2009 (Ex. A).

III. Physical Impairments.

6. The Claimant also asserted one physical (non-psychological) impairment (Claimant testimony). This could best be described as degenerative joint disease (DJD) of the knees, categorized under SSA Impairment Listing No. 1.01.

7. There is medical evidence that the Claimant has had some amount of degenerative joint disease (DJD) of the left knee since at least October 18, 2007 (Exs. 2.0082, 2.0204).

8. A radiologist's report dated November 13, 2007 (Ex. 2.0139) states in relevant part that the Claimant's "bones demonstrate degenerative changes of the thoracic spine."

9. A radiologist's report on the Claimant's left knee dated June 5, 2008 (Exs. 2.0175 - 2.0176) states that "there is moderate medial and patellofemoral compartment narrowing with associated spurring consistent with osteoarthritis,"⁷ but that "no fracture, dislocation or effusion is seen."

10. In a treatment note dated June 11, 2008 (Ex. 2.0111) Dr. [REDACTED], M.D. stated that the Claimant "has evidence on her liver function tests as well as her physical exam of an alcohol related hepatitis."

11. A treatment note by Dr. [REDACTED], M.D. dated June 27, 2008 (Ex. 2.0162) states in relevant part that his plan for treatment of the Claimant's knee problem was to "get her a knee brace so she may return to gainful employment." Dr. [REDACTED] has been one of the Claimant's treating physicians since at least September 21, 2007 (Ex. 2.0172).

12. The Claimant testified that her knees began to affect her ability to perform physical work approximately 2 years ago while she was working at a restaurant (Claimant testimony). Since then her left shin bone "clicks like it wants to pop out." *Id.*

13. The Claimant has trouble walking more than about one city block at a time, and has difficulty with stairs and walking down hills (Claimant testimony). She has trouble bending. *Id.* She can only stand for about 30 minutes at a time. *Id.* If she sits for more than about 30 minutes at a time it is then difficult for her to get back up. *Id.* She can lift 10 pounds on an occasional basis, but would not be able to do that continuously all day. *Id.*

⁷ Osteoarthritis is the most common form of arthritis. See Medline Plus online medical dictionary, a service of the U.S. National Library of Medicine and the National Institutes of Health, at <http://www.nlm.nih.gov/medlineplus/osteoarthritis.html> (date accessed April 29, 2010). Osteoarthritis breaks down the cartilage in the joints. *Id.* It causes pain, swelling and reduced motion in the joints. *Id.* It can occur in any joint, but usually it affects the hands, knees, hips or spine. *Id.*

IV. Significant Evidence Submitted After Issuance of Original Decision.

14. A four-view radiological study of the Claimant’s left knee dated February 1, 2010 (Ex. L) states in relevant part as follows:

Impression: progressive osteoarthritis involving the medial joint compartment of the left knee.

* * * * *

Findings: There is a degenerative change involving the knee joint with progressive medial joint space narrowing and subchondral⁸ sclerosis.⁹ Suprapatellar joint effusion.¹⁰ Findings compatible with left knee osteoarthrosis.

15. A letter from [REDACTED], M.D. dated March 1, 2010 (Exs. C, M) states in relevant part as follows:

[The Claimant] has chronic disabling pain in her left knee with presumed internal derangement. I did not find the knee to be unstable on examination. [The Claimant] is a candidate for . . . consideration [of] surgical intervention

PRINCIPLES OF LAW

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 proof¹¹ by a preponderance of the evidence.¹²

⁸ Subchondral means situated beneath the cartilage. See Merriam-Webster Online Dictionary at <http://www.merriam-webster.com/medical/subchondral> (date accessed April 29, 2010).

⁹ Sclerosis is any pathological hardening or thickening of tissue. See wordnetweb.princeton.edu/perl/webwn (date accessed April 29, 2010).

¹⁰ Knee joint effusion is a general term for excess fluid accumulation in or around the knee joint. See Mayo Clinic website at <http://www.mayoclinic.com/health/water-on-the-knee/ds00662> (date accessed April 29, 2010). This condition is commonly referred to as “water on the knee.” *Id.*

¹¹ “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).

¹² 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).

The Interim Assistance Program; Use of SSA Disability Criteria.

Interim Assistance is a benefit provided by the State of Alaska to Adult Public Assistance applicants while they are waiting for the Social Security Administration (SSA) to approve their Supplemental Security Income (SSI) 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.

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 42 USC 1381 - 1383f and 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.”

The Social Security Administration’s SSI disability analysis involves a sequential multistep evaluation. *Briscoe ex rel. Taylor v. Barnhart*, 425 F.3d 345, 351-52 (7th Cir. 2005). This evaluation considers (1) whether the claimant is presently engaged in substantial gainful activity; (2) whether the claimant has a severe impairment or combination of impairments (the duration of the impairment is an aspect of this severity requirement); (3) whether the claimant's impairment meets or equals any impairment listed in the regulations as being so severe as to preclude substantial gainful activity; (4) whether the claimant's residual functional capacity leaves him unable to perform his past relevant work; and (5) whether the claimant is unable to perform any other work existing in significant numbers in the national economy. 20 C.F.R. §§ 404.1520, 416.920. A finding of disability requires an affirmative answer at either step three or step five, above.

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 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.

Severity of Impairments – In General.

The second step in the analysis is to determine whether the applicant’s impairment is “severe” as defined by the applicable Social Security regulations. The Social Security Regulations define a severe impairment as 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:

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. Acceptable medical sources include licensed physicians and psychologists. 20 C.F.R. § 404.1513(a). The claimant's own statement of symptoms alone will not suffice. 20 C.F.R. § 416.908.

If the impairment is not severe, the applicant is not disabled. 20 CFR 416.920(a)(4)(ii). If an applicant *is* severely impaired, then it is necessary to proceed to the next step of the disability analysis and determine whether the Claimant's impairment meets the 12 month durational requirement.

Severity of Mental Impairments.

A medically determinable *mental impairment* is one that results "from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques," and it "must be established by medical evidence consisting of signs, symptoms, and *laboratory findings*, not only by [the claimant's] statement of symptoms." See 20 CFR § 404.1508, 20 CFR § 404.1520a(b)(1), 20 CFR 416.908, and 20 CFR 416.920a(b)(1).

The "step 2" criteria applied to mental impairments by the Social Security disability regulations, set forth in 20 CFR §§ 404.1520(a) and 416.920(a), are more particularized (and arguably more exacting) than those applied to physical impairments. However, because the new evidence concerning the Claimant's *physical impairment*, (submitted after this Office's original decision was issued), is dispositive on remand, it is not necessary to discuss the regulations applicable to the Claimant's mental impairments in any detail in this decision.

If the impairment is not severe, the applicant is not disabled. 20 CFR 416.920(a)(4)(ii). If an applicant is severely impaired, then it is necessary to proceed to the next step of the analysis and determine whether the Claimant's impairment meets the 12 month durational requirement.

Duration.

The next step in the analysis is to determine whether the applicant's severe impairment has already 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.¹³ 20 CFR 416.909. If the severe impairment does not satisfy this duration requirement, the applicant is not disabled. 20 CFR 416.920(a)(4)(ii). If the severe impairment satisfies this duration requirement, then it is necessary to proceed to the next step

¹³ Although the issue of duration is technically separate and distinct from the issue of severity, the Social Security Disability analysis, as set forth in federal regulation 20 CFR 416.920(a)(4)(ii), treats the durational requirement as part of the "step two" severity analysis.

of the disability analysis and determine whether the Claimant's impairment meets or equals the specific criteria set forth in the Social Security Administration's Listing of Impairments.

Severe Impairment That Meets or Equals The Listing.

The next step in the analysis is to determine whether the applicant's severe impairment meets or medically equals the listing of impairments contained in the Social Security regulations located at 20 CFR Part 404, Subpart P, Appendix 1.

The claimant bears the burden of establishing that his impairments satisfy the requirements of a listings impairment. *Tackett v. Apfel*, 180 F.3d 1094, 1098-1099 (9th Cir.1999); *Sullivan v. Zebley*, 493 U.S. 521, 530-531, 110 S.Ct. 885, 107 L.Ed.2d 967 (1990). To meet a listing, an impairment must meet *all* of the listing's specified criteria. *Sullivan*, 493 U.S. at 530 ("An impairment that manifests only some of these criteria, no matter how severely, does not qualify.").

An impairment is medically equivalent to a listed impairment "if it is at least equal in severity and duration to the criteria of any listed impairment." 20 CFR 416.926(a). Medical equivalence must be based on medical findings. *Sullivan*, 493 U.S. at 531 ("a claimant . . . must present medical findings equal in severity to *all* the criteria for the one most similar listed impairment"). Responsibility for determining medical equivalence rests with the hearing officer. 20 CFR 926(e).

A finding of disability may be based on the combined effect of multiple impairments which, if considered individually, would not be of the requisite severity. See 20 C.F.R. § 404.1520(a)(4)(ii); 20 C.F.R. § 416.923; 20 C.F.R. § 416.911; 20 C.F.R. § 416.906; and *Loza v. Apfel*, 219 F.3d 378, 393 (5th Cir. 2000).

If the applicant's severe impairment meets or medically equals the listing of impairments contained in the Social Security regulations located at 20 CFR Part 404, Subpart P, Appendix 1, then the applicant is deemed disabled and no further inquiry is required. 20 CFR 416.920(a)(4)(iii). However, if the severe impairment *does not* meet or medically equal the listing of impairments, then it is necessary to proceed to the next step in the analysis and determine whether the applicant can perform his or her prior relevant work.

Capability of Performing Previous Relevant Work.

The next step is to determine whether the applicant's severe impairment prevents him or her from performing his or her previous relevant work. If the applicant is not prevented from performing his or her previous relevant work, the applicant is not disabled. 20 CFR 416.920(a)(4)(iv). Otherwise, it is necessary to proceed to the next step in the analysis and determine whether the applicant can perform any other work.

Capability of Performing Other Work.

Pursuant to 20 CFR 404.1545(a)(5)(ii), if it is determined that a claimant cannot perform his or her past relevant work, it is then necessary to decide whether the applicant "can make an adjustment to any other work that exists in the national economy" or, in other words, to determine whether the applicant is capable of performing other jobs. At this stage, however, the burden of proof shifts from the claimant to the agency. See 20 CFR 404.1562(c)(2); see also *Robinson v. Sullivan*, 956

F.2d 836, 839 (8th Cir. 1992). If the applicant is not capable of performing other work, he or she is disabled. 20 CFR 416.920(a)(4)(v).

Special Rules Applicable In Cases Involving Drug and Alcohol Addiction.

A review of the medical documentation in this case shows that the Claimant suffers from alcohol addiction in addition to her other impairments. The Social Security Administration (SSA) has promulgated regulations to address the situation where (as here) some portion of a claimant's impairment results from alcohol addiction. The federal courts have issued decisions explaining how these regulations are to be applied.

In cases involving drug or alcohol addiction, the hearing officer must *first* determine whether the claimant is disabled using the standard five-step approach (described at pages 8-9, above). *Viers v. Astrue*, 582 F.Supp.2d 1109 (N.D. Iowa 2008). The five-step analysis is applied *without deducting or segregating out any effects that might be due to substance abuse. Id.*

If the hearing officer determines that the addicted claimant is disabled, the hearing officer must next consider whether the Claimant would still be disabled if the effects of the substance abuse *were absent*. *Viers v. Astrue*, 582 F.Supp.2d 1109 (N.D. Iowa 2008). The issue at this point is the level of impairment that would remain *if the substance abuse ceased*, and whether those remaining impairments are disabling. *Id.*

The hearing officer may then only deny benefits if the claimant's drug addiction or alcoholism is a contributing factor material to the determination of the claimant's disability. 20 C.F.R. § 416.935. A drug or alcohol addiction is a contributing factor if the claimant's remaining limitations would *not* be disabling in the absence of drugs or alcohol. *Id.* If, however, the claimant's other (i.e. non-drug or alcohol-related) limitations would still be disabling by themselves, the claimant must be found to be disabled regardless of his or her drug addiction or alcoholism. *Id.*, *see also Grogan v. Barnhart*, 399 F.3d 1257 (10th Cir. 2005).

ANALYSIS

Introduction.

As an applicant for Interim Assistance benefits, the Claimant has the burden of proving, by a preponderance of the evidence, that her impairments satisfy 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.

I. Is The Claimant Performing Substantial Gainful Activity?

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

At the hearing the Claimant testified that she was not currently working. This testimony was not disputed by the Division. Accordingly, the Claimant has carried her burden and has proven, by a preponderance of the evidence, that she 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 at least one of her impairments 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).

Alternatively, a finding of severe impairment may be based on the combined effect of multiple impairments which, if considered individually, would not be of the requisite severity. See 20 C.F.R. § 404.1520(a)(4)(ii); 20 C.F.R. § 416.923; 20 C.F.R. § 416.911; 20 C.F.R. § 416.906; and *Loza v. Apfel*, 219 F.3d 378, 393 (5th Cir. 2000).

The criteria used by the Social Security disability regulations to analyze physical impairments are different than the criteria used to analyze mental impairments, as explained below. Accordingly, the Claimant’s alleged physical and mental impairments must be analyzed separately.

A. The Claimant’s Physical Impairments.

The next step is to determine whether one of the Claimant’s physical impairments is medically severe pursuant to 20 CFR 416.920(c). A “severe impairment” is one that “significantly limits [a person’s] . . . ability to do basic work activities.”¹⁴ 20 CFR §§ 404.1520(c) and 416.920(c).

The Claimant’s medical records indicate some degree of physical impairment with regard to her left knee, thoracic spine, and liver (see Findings of Fact at paragraphs 6 – 15, above). However, the only physical impairment asserted by the Claimant as a basis of disability pertains to her left knee (Claimant testimony). Accordingly, this analysis is limited to a discussion of the degree of impairment of the Claimant’s left knee.

The Claimant testified that she has trouble walking more than about one city block at a time; that she has difficulty with stairs and walking down hills; that she has trouble bending; that she can only stand for about 30 minutes at a time; that if she sits for more than about 30 minutes at a time it is then difficult for her to get back up; and that she can lift 10 pounds on an occasional basis, but would not be able to do that continuously all day.

¹⁴ 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.

If the sole criterium for determining the severity of an impairment were the Claimant's own testimony, she would clearly qualify as severely impaired pursuant to 20 CFR 416.920(c) and 20 CFR 416.921(b). However, for purposes of a disability determination, a claimant's own statement of symptoms, by itself, will not suffice. 20 CFR § 416.908. *Evidence from acceptable medical sources is necessary to establish the severity of an impairment.* 20 C.F.R. § 404.1513(a); see also 20 CFR 416.908.

At the time the original decision was issued in this case, there was medical evidence that the Claimant had osteoarthritis or degenerative joint disease (DJD) of the left knee since at least October 18, 2007 (Exs. 2.0082, 2.0204). However, the radiologist's report on the Claimant's left knee dated June 5, 2008 (Exs. 2.0175 - 2.0176) stated that there was only "moderate medial and patellofemoral compartment narrowing with associated spurring consistent with osteoarthritis," and that "no fracture, dislocation or effusion is seen."

Similarly, Dr. ██████'s treatment note dated June 27, 2008 (Ex. 2.0162) stated in relevant part that his plan for treatment of the Claimant's knee was merely to "get her a knee brace so she may return to gainful employment." Accordingly, *based on the medical evidence in the record at the time the original decision was issued in this case*, the Claimant's physical impairment (i.e. osteoarthritis or degenerative joint disease (DJD) of the left knee) did not *significantly limit* her ability to perform basic work activities as defined by 20 CFR 416.920(c) and 20 CFR 416.921(b).

However, after the original decision was issued in this case, the Claimant submitted new medical evidence. This new evidence consists of (1) a four-view radiological study of the Claimant's left knee dated February 1, 2010 issued by Dr. ██████ (Ex. L), and (2) a letter from ██████, M.D. dated March 1, 2010 (Exs. C, M).

The new radiological study of the Claimant's left knee dated February 1, 2010 (Ex. L) states in relevant part that the Claimant suffers from:

[P]rogressive osteoarthritis involving the medial joint compartment of the left knee . . . There is a degenerative change involving the knee joint with progressive medial joint space narrowing and subchondral sclerosis. Suprapatellar joint effusion. Findings compatible with left knee osteoarthrosis. [Emphasis added].

Based on this new radiological report, the Claimant's treating physician, ██████, concluded that the Claimant "has chronic disabling pain in her left knee with presumed internal derangement" (Exs, C, M).

Dr. ██████'s treatment note dated June 27, 2008 (Ex. 2.0162), which indicated a very low level of impairment, was 18-19 months old at the time this Office's original decision was issued. In June 2008 Dr. ██████'s opinion was that the Claimant could return to work if she would only get a knee brace. *Id.*

However, Dr. ██████'s *new letter* dated March 1, 2010 (Exs. C, M) presents an entirely different picture of the extent of the Claimant's physical impairment. Now, approximately 22 months after his last opinion, Dr. ██████'s current opinion is that the Claimant "has chronic disabling pain in her left knee with presumed internal derangement" (Exs. C, M).

Dr. ██████'s *new letter* indicates a substantial change in his medical opinion since he wrote the treatment note dated June 27, 2008, (Ex. 2.0162), upon which this Office relied in its original opinion. However, Dr. ██████'s opinion appears to be supported by the new (February 1, 2010) radiology report (quoted above) issued by Dr. ██████ (Ex. L).

Dr. ██████ is the Claimant's treating physician with regard to her knee problem. In general, the opinions of treating physicians are entitled to controlling weight. *Cruse v. Commissioner of Social Security*, 502 F.3d 532, 540 (6th Cir.2007), *citing Walters v. Commissioner of Social Security*, 127 F.3d 525, 529-30 (6th Cir.1997) (citing 20 CFR § 404.1527(d)(2) (1997)).¹⁵ There is no evidence in the record to indicate that the Claimant's most recent medical reports are biased or otherwise untrustworthy. In the absence of recent contradicting medical evidence, these medical reports must be accepted as credible.

Further, review of approximately 220 cases indicates that, in the last 20 years, osteoarthritis or degenerative joint disease of the knee has been held to constitute a "severe impairment" in virtually every federal court decision, involving Social Security SSI appeals, in which that impairment was asserted by a claimant. *See, for example, Irby v. Barnhart*, 180 Fed. Appx. 491 (5th Cir. 2006), *Johnson v. Astrue*, 303 Fed. Appx. 543 (9th Cir. 2008), *Williams v. Astrue*, 317 Fed. Appx. 212 (3rd Cir. 2009), and *de Lopez v. Astrue*, 643 F.Supp.2d 1178 (C.D. Cal. 2009).²¹⁶

In summary, at the time the original decision was issued in this case, the medical evidence in the record (which was 18-19 months old at the time) did not support the Claimant's testimony regarding the extent of her physical impairment.

However, the medical records submitted *since* the original decision was issued in this case provide an objective medical basis for the Claimant's assertion that her ability to do basic work activities such as walking, standing, sitting, and lifting (20 CFR 416.921(b)) is limited because of her DJD of the left knee and the pain and weakness associated therewith.

¹⁵ The reason for the deference to the opinion of a treating physician is clear: the treating physician has had a greater opportunity to examine and observe the patient. *See, Walker v. Secretary of Health and Human Services*, 980 F.2d 1066, 1070 (6th Cir.1992). Further, as a result of his or her duty to cure the patient, the treating physician is generally more familiar with the patient's condition than are other physicians. *Id.* (citation omitted).

¹⁶ *See also Dunn v. Bowen*, 716 F.Supp. 157 (D.N.J. 1989), *Eldridge v. Sullivan*, 726 F.Supp. 663 (S.D. Ohio 1989)? *Saulsberry v. Chater*, 959 F.Supp. 1247 (C.D.Cal. 1997), *Nelson v. Apfel*, 1998 WL 34112758 (N.D.Iowa 1998), *Sykes v. Apfel*, 2001 WL 102986 (S.D.Ala. 2001), *Wade v. Barnhart*, 2002 WL 314658 (N.D. Ill. 2002), *Ragas v. Social Sec. Admin.* 2002 WL 362816 (E.D. La. 2002), *Hedberg v. Barnhart*, 2003 WL 21418361 (N.D. Ill. 2003), *Bolden v. Barnhart*, 2003 WL 22466191 (D. Kan. 2003), *Coates v. Barnhart*, 2003 WL 24270169 (D. Md. 2003), *McNabb v. Barnhart*, 347 F.Supp.2d 1085 (M.D. Ala. 2003), *Gann v. Barnhart*, 2004 WL 2282910 (D. Kan. 2004), *Stack v. Barnhart*, 327 F.Supp.2d 1175 (C.D. Cal. 2004), *James v. Commissioner of Social Security*, 2005 WL 351767 (E.D.Mich. 2005), *Carroll ex rel. Charleston v. Barnhart*, 2005 WL 1719225 (W.D. Texas 2005), *Kurilla v. Barnhart*, 2005 WL 2704887 (E.D. Pa. 2005), *Hicok v. Barnhart*, 2005 WL 3560718 (N.D.Iowa 2005), *Gilkey v. Barnhart*, 417 F.Supp.2d 949 (N.D. Ill. 2006), *Lewis v. Barnhart*, 431 F.Supp.2d 657 (E.D. Texas 2006), *Leonard v. Barnhart*, 2006 WL 3523103 (W.D. Wis. 2006), *Wright v. Barnhart*, 2006 WL 4049579 (D.Conn. 2006), *Gross v. Astrue*, 2007 WL 1704186 (W.D. Va. 2007), *Judkins v. Astrue*, 2007 WL 1857186 (M.D. Ala. 2007), *Thomas v. Astrue*, 2007 WL 2713216 (E.D. Pa. 2007), *Hines v. Astrue*, 2007 WL 2889451 (D. Conn. 2007), and *Ingram v. Astrue*, 2007 WL 4622801 (W.D. La. 2007). Of course, each of these cases required *medical evidence* that there was an objective cause (i.e. osteoarthritis or DJD) to support the claimant's complaints of knee pain. It was this objective medical evidence that was lacking at the time the original decision was issued in this case.

Accordingly, the Claimant has carried her burden and proven, by a preponderance of the evidence, that her osteoarthritis or degenerative joint disease (DJD) of the left knee (categorized under SSA Impairment Listing No. 1.01) constitutes a “severe impairment” as defined by 20 CFR § 404.1520(c), 20 CFR § 416.920(c), and the judicial decisions interpreting those regulations. It is therefore necessary to proceed to the next step of the Social Security disability analysis and to determine whether the Claimant's impairment satisfies the twelve month durational requirement.¹⁷

B. The Claimant's Mental Impairment.

The Claimant's *physical* impairment has been found to be medically severe at this stage of the disability analysis based on the new medical evidence submitted by the Claimant (see above). Accordingly, it is not necessary to determine whether the Claimant's *mental* impairment is medically severe.

III. Does the Claimant Satisfy The Twelve Month Durational Requirement?

The next step is to decide whether or not the Claimant's severe impairment has lasted, or can be expected to last, for a continuous period of at least 12 months (20 CFR 416.909). If the severe impairment does not satisfy this duration requirement, the applicant is not disabled (20 CFR 416.920(a)(4)(ii)).

There is medical evidence that the Claimant has had some amount of degenerative joint disease (DJD) of the left knee since at least October 18, 2007 (Exs. 2.0082, 2.0204). Thus, the Claimant has suffered from her knee impairment for approximately 30 months. This evidence was not contradicted by the Division. Accordingly, the Claimant satisfies the 12 month durational

¹⁷ In her letter of remand dated April 15, 2010, the Director instructed this Office to (among other things) consider the legal argument made in the letter from the Claimant's counsel dated April 7, 2010. The issue raised in the letter from the Claimant's counsel, (who represented the Claimant at the Director's Appeal level but not at the original hearing), was whether the “step two” severity analysis was properly weighted in this Office's original decision in this case.

The Claimant's counsel asserted in his letter (Ex. T) that this Office erred in its “step two” severity analysis by applying too stringent a standard in determining whether the Claimant's impairments were severe. Counsel cited *Bowen v. Yuckert*, 482 U.S. 137, 107 S.Ct. 2287, 96 L.Ed.2d 119 (1987), and 20 CFR 416.921, in support of the proposition that “step two” is a *de minimus* standard which can be satisfied by any combination of impairments that result in any significant limitation of a Claimant's physical or mental ability to perform work.

The legal standard asserted by the Claimant's counsel is correct. However, this was the same legal standard applied by this Office in its original decision (*see* decision dated January 29, 2010 at pp. 8, 11, 14, and 15). Claimant's counsel acknowledged in his letter that his legal opinion was based on his review of only “a portion” of this Office's original decision (evidently pages 15 and 16 only). Had the Claimant provided her counsel with a complete copy of this Office's decision, it would have been readily apparent that this Office's original finding (that the Claimant's physical impairment was not severe) *resulted from the Claimant's failure to provide appropriate medical evidence to support her disability*, rather than from any failure of this Office to apply the correct legal standard.

In summary, the finding in this decision that the Claimant's physical impairment (DJD of the left knee) is a medically severe impairment is not based on this Office's application of a “softer” legal standard on remand. Rather, the finding in this decision that the Claimant's physical impairment (DJD of the left knee) is a medically severe impairment is due *solely* to the decisive medical evidence submitted by the claimant following the issuance of the original decision in this case (see Findings of Fact at Paragraphs 14 – 15, above).

requirement. It is therefore necessary to proceed to the next step in the Social Security disability analysis.

IV. Do the Claimant's Impairments Meet or Medically Equal the Requirements of "the Listings?"

The next step is to decide whether or not the Claimant's severe impairments meet or medically equal, (alone or in combination), the criteria of the Listing of Impairments contained in the Social Security regulations at 20 CFR Part 404, Subpart P, Appendix 1. The Social Security disability system classifies the Claimant's DJD of the left knee under the musculoskeletal listing. 20 CFR Part 404, Subpart P, Appendix 1, § 1.02. Section 1.02 provides in relevant part as follows:

1.02 Major dysfunction of a joint(s) . . . Characterized by gross anatomical deformity (e.g., subluxation,¹⁸ contracture, bony or fibrous ankylosis,¹⁹ 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 the Claimant's DJD of the left knee is as follows:

1. A radiologist's report on the Claimant's left knee dated June 5, 2008 (Exs. 2.0175 - 2.0176) states that "there is moderate medial and patellofemoral compartment narrowing with associated spurring consistent with osteoarthritis,"²⁰ but that "no fracture, dislocation or effusion is seen."
2. A four-view radiological study of the Claimant's left knee dated February 1, 2010 (Ex. L) states in relevant part that "[t]here is a degenerative change involving the knee joint with progressive medial joint space narrowing and subchondral²¹ sclerosis."²² Suprapatellar joint effusion.³²³ Findings compatible with left knee osteoarthrosis."

¹⁸ According to Princeton University's online dictionary, subluxation is the partial displacement of a joint or organ. See wordnetweb.princeton.edu/perl/webwn (date accessed April 29, 2010).

¹⁹ According to Princeton University's online dictionary, ankylosis is an abnormal adhesion and rigidity of the bones of a joint. See wordnetweb.princeton.edu/perl/webwn (date accessed April 29, 2010).

²⁰ Osteoarthritis is the most common form of arthritis. See Medline Plus online medical dictionary, a service of the U.S. National Library of Medicine and the National Institutes of Health, at <http://www.nlm.nih.gov/medlineplus/osteoarthritis.html> (date accessed April 29, 2010). Osteoarthritis breaks down the cartilage in the joints. *Id.* It causes pain, swelling and reduced motion in the joints. *Id.* It can occur in any joint, but usually it affects the hands, knees, hips or spine. *Id.*

²¹ Subchondral means situated beneath the cartilage. See Merriam-Webster Online Dictionary at <http://www.merriam-webster.com/medical/subchondral> (date accessed April 29, 2010).

The Claimant's radiological evidence may or may not satisfy the criteria contained in the first 6 lines of Section 1.02; this is difficult to determine without medical expertise. However, the Claimant does not satisfy the functional 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)) gives the inability to walk without a walker, or two crutches, or two canes, as an example of an inability to ambulate effectively. *Id.* at Section 1.00(B)(2)(b)(2).

The Claimant's ability to walk is clearly limited. *See* Findings of Fact at Paragraphs 12, 13, and 15, above. However, her ability to walk has not yet deteriorated to the point where she must use two canes, two crutches, or a walker. Accordingly, the Claimant does not have "an extreme limitation of the ability to walk" based on the Listings criteria.

Because the Claimant has not established "an extreme limitation of the ability to walk" (i.e. because she does not require two canes, two crutches, or a walker), she does not meet or medically equal the applicable criteria for the musculoskeletal category of the Listing of Impairments. It is therefore necessary to proceed to the next question in the Social Security disability analysis: whether or not the Claimant's severe impairment prevents her from performing her prior relevant work.

V. Do the Claimant's Impairments Prevent Her from Performing Her Previous Work?

The next step is to determine whether the Claimant's severe impairment prevents her from performing her previous relevant work. If the Claimant is not prevented from performing her previous relevant work, she is not disabled. 20 CFR 416.920(a)(4)(iv). If, however, the Claimant can no longer perform her past relevant work, it is necessary to proceed to the next step in the disability analysis and determine whether the Claimant can perform any other work.

The testimony of a vocational specialist is normally used in Social Security disability cases to determine whether or not a claimant can perform his or her past relevant work. *See* 20 CFR 404.1560(b)(2). Unfortunately, no such testimony exists in this case. The only evidence on this issue is the Claimant's own hearing testimony.

The Claimant worked at various fast food restaurants from her early teens through age 23 (Claimant testimony). She worked as a Certified Nursing Assistant for approximately 2 years. *Id.* She has worked as a liquor store clerk and a bartender. *Id.* She worked as a cook for approximately 10 years. *Id.* She has worked as a deck hand on a commercial fishing vessel for the last eight (8) years. *Id.* The Claimant's most recent work as a deck hand was heavy physical work. *Id.* In summary, all of the Claimant's prior occupations involved a great deal of standing, bending, twisting, and lifting.

²² Sclerosis is any pathological hardening or thickening of tissue. *See* wordnetweb.princeton.edu/perl/webwn (date accessed April 29, 2010).

²³ Knee joint effusion is a general term for excess fluid accumulation in or around the knee joint. *See* Mayo Clinic website at <http://www.mayoclinic.com/health/water-on-the-knee/ds00662> (date accessed April 29, 2010). This condition is commonly referred to as "water on the knee." *Id.*

The Claimant's knees began to affect her ability to perform physical work approximately 2 years ago while she was working at a restaurant (Claimant testimony). She has trouble walking more than about one city block at a time. *Id.* She has difficulty with stairs and walking down hills. *Id.* She has trouble bending. *Id.* She can only stand for about 30 minutes at a time. *Id.* If she sits for more than about 30 minutes at a time, it is then difficult for her to get back up. *Id.* She can lift 10 pounds on an occasional basis, but would not be able to do that continuously all day. *Id.*

Based on the newly submitted medical evidence, the Claimant's testimony regarding her physical limitations is credible. Accordingly, she has carried her burden and proven, by a preponderance of the evidence, that she can no longer perform her *prior physical work (past relevant work)*. It is therefore necessary to proceed to the final step in the Social Security disability analysis: determining whether the Claimant can perform any work.

VI. Do The Claimant's Impairments Prevent Her From Performing Any Work?

Pursuant to 20 CFR 404.1545(a)(5)(ii), if it is determined that a claimant cannot perform his or her *past relevant work*, it is then necessary to decide whether the applicant "can make an adjustment to any other work that exists in the national economy" or, in other words, to determine whether the applicant is capable of performing other jobs.

A. The Burden of Proof Shifts to the Agency.

At this stage, however, the burden of proof shifts from the claimant to the agency. *See* 20 CFR 404.1562(c)(2); *see also Robinson v. Sullivan*, 956 F.2d 836, 839 (8th Cir. 1992). To meet this burden, the agency must show: (1) that the claimant's impairment still permits certain types of activity necessary for other occupations and the claimant's experience is transferable to other work; and (2) that specific types of jobs exist in the national economy which are suitable for a claimant with these capabilities and skills. *Decker v. Harris*, 647 F.2d 291, 294 (2nd Cir.1981). It is not the claimant's burden to produce or develop vocational evidence at step five. *See Thompson v. Sullivan*, 987 F.2d 1482, 1491 (10th Cir. 1993). It is also held that a hearing officer is not qualified to provide affirmative vocational evidence. *Wilson v. Califano*, 617 F.2d 1050, 1053-54 (4th Cir. 1980).

B. The Agency Has Not Satisfied its Burden of Proof.

A DPA Interim Assistance Medical Review Denial Form prepared by DPA Medical Reviewer [REDACTED], R.N. dated September 22, 2009 (Ex. 2.0002) states in relevant part that "it is likely that [the Claimant] could engage in non-stressful work activities requiring simple routine repetitive tasks." However, the Division presented no evidence that the Claimant's impairment still permits certain types of activity necessary for other occupations, that the Claimant's experience is transferable to other work, or that specific types of jobs exist in the national economy which are suitable for the Claimant.²⁴ Accordingly, the Division has failed to present the evidence necessary

²⁴ In some circumstances a decision on whether or not a claimant is disabled is made under the Social Security Administration's medical-vocational guidelines (located at 20 CFR, Part 404, Subpart P, Appendix 2). These guidelines, known as "the Grids," seek to make the disability determination process more certain and uniform by mandating a given result when certain factual prerequisites are satisfied. When a claimant's exertional level, age, education, and skill level (i.e. work experience) fit precisely within the criteria of a grid rule, a hearing officer may base a determination of nondisability conclusively on the grids. *See Trimiar v. Sullivan*, 966 F.2d 1326, 1332 (10th Cir. 1992); *see also* 20 C.F.R. Part 404, Subpart P, Appendix 2, § 200.00(a) & Table No. 1. However, where (as here) a

to meet its burden of proof at this step of the disability analysis (see regulation and cases cited in preceding paragraph).²⁵

In summary, the Claimant proved that she can no longer perform her prior work, and the Division failed to prove that the Claimant is capable of performing any other work. The Claimant is therefore deemed disabled according to the Social Security regulations and relevant case law. 20 CFR 416.920(a)(4)(v).

VII. Would the Claimant Still Be Disabled Absent Her Prior Alcohol Addiction?

In cases involving drug or alcohol addiction, the hearing officer must *first* determine whether the claimant is disabled using the standard five-step approach (which was concluded in Analysis Section VI, immediately above). See Principles of Law at page 9, above. Then, if the hearing officer determines that the addicted claimant is disabled, the hearing officer must next consider whether the claimant would still be disabled if the effects of the substance abuse *were absent. Id.*

In this case, the Claimant's alcohol abuse and/or addiction may or may not be a contributing factor with regard to the Claimant's *mental impairments* (see Findings of Fact in original decision at paragraphs 3 - 22). However, there is absolutely no evidence in the record indicating that the Claimant's alcohol abuse and/or addiction is a contributing factor with regard to the Claimant's *physical impairment* (osteoarthritis and DJD of the left knee). Accordingly, the Claimant's physical impairment would still be disabling, by itself, even if the Claimant's alcohol abuse and/or addiction were absent. The Claimant must therefore be found to be disabled regardless of any prior or current alcohol abuse and/or addiction.

CONCLUSIONS OF LAW

1. The Claimant carried her burden and proved, by a preponderance of the evidence, that
 - a. She is not currently engaged in substantial gainful activity as defined by 20 CFR 404.1510.
 - b. Based on new evidence submitted after the issuance of the original decision in this case, the Claimant's physical impairment, degenerative joint disease (DJD) of the left knee (categorized under SSA Impairment Listing No. 1.02), constitutes a "severe impairment" as defined by 20 CFR §§ 404.1520(c), 416.920(c), and 416.921(b).²⁶

claimant has nonexertional limitations (such as pain and mental impairments) which are in themselves enough to limit the range of work, a hearing officer should not apply the grids. *Desrosiers v. Secretary of Health and Human Servs.*, 846 F.2d 573, 577-578 (9th Cir. 1987); *Saulsberry v. Chater*, 959 F.Supp. 1247, 1250 (N.D. Cal. 1997).

²⁵ Neither the Division's Hearing Representative nor its Medical Reviewer can be faulted for this, however, because (unlike the federal Supplement Security Income (SSI) Program), the Interim Assistance Program does not provide the parties or this Office with a vocational expert, who would normally present this missing evidence.

²⁶ Because the Claimant's physical impairment was found to be medically severe based on new medical evidence submitted by the Claimant after the issuance of the original decision in this case, (see above), and because that new evidence demonstrates that the Claimant is disabled by her physical impairment, it was not necessary to determine on remand whether the Claimant's *mental* impairment is medically severe.

- c. Her impairment has lasted or can be expected to last for 12 months or longer. The Claimant therefore satisfies the twelve month durational requirement of 20 CFR 416.909 and 20 CFR 416.920(a)(4)(ii).
2. The Claimant failed to prove, by a preponderance of the evidence, that her impairment meets or medically equals the requirements of the Social Security Administration's applicable Listing of Impairments (Impairment Listing No. 1.02).
3. The Claimant carried her burden and proved, by a preponderance of the evidence, that she is not capable of performing her *past relevant work*, which was very physical.
4. The Division failed to carry its burden of proof and did not prove, by a preponderance of the evidence, that the Claimant is capable of performing any other work.
5. The Claimant carried her burden and proved, by a preponderance of the evidence, that her alcohol abuse and/or addiction is not a contributing factor material to the Claimant's disability. 20 C.F.R. § 416.935.
6. The Claimant therefore satisfies the disability criteria for Interim Assistance benefits, pursuant to 7 AAC 40.180, based on the new evidence submitted to this Office after the issuance of the original decision in this case.

DECISION

The Claimant satisfies the disability criteria for Interim Assistance benefits, pursuant to 7 AAC 40.180, based on the new evidence submitted to this Office after the issuance of the original decision in this case.

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
P.O. 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 11th day of May, 2010.

/signed/
Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 11th day of May 2010 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:

Claimant – Certified Mail, Return Receipt Requested
[REDACTED], Fair Hearing Representative

[REDACTED], Director, DPA
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], Chief of Field Services
[REDACTED], Administrative Assistant II
[REDACTED], Eligibility Technician I

Additional courtesy copies to:

[REDACTED], Esq.
Alaska Legal Services Corporation

[REDACTED], Esq.
Attorney General's Office
State of Alaska Department of Law

By _____
J. Albert Levitre, Jr.
Law Office Assistant I