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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. 10-FH-162
)
 Claimant.) DPA Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Interim Assistance on February 9, 2010 (Ex. 2.0). The State of Alaska Division of Public Assistance (DPA or Division) denied his application on April 29, 2010 (Ex. 6). The Claimant requested a fair hearing contesting the denial on May 17, 2010 (Exs. 7.0, 7.1).

This Office has jurisdiction to decide this case pursuant to 7 AAC 49.010.

Hearings were held on June 22, 2010, July 27, 2010, and September 14, 2010 before Hearing Examiner Jay Durych. The Claimant participated by telephone in the hearings of June 22, 2010 and July 27, 2010. [REDACTED] and [REDACTED] of Access Alaska participated by telephone in the hearings of June 22, 2010 and July 27, 2010, represented the Claimant, and testified on his behalf. [REDACTED], a Vocational Rehabilitation Counselor I with the State of Alaska Division of Vocational Rehabilitation (DVR), attended the hearing of June 22, 2010 by telephone on behalf of the Claimant, but did not testify.

Public Assistance Analyst [REDACTED] appeared in person at the hearings of June 22, 2010 and September 14, 2010 to represent and testify on behalf of the Division. [REDACTED], another Public Assistance Analyst employed by the Division, appeared in person at the hearing of July 27, 2010 to represent and testify on behalf of the Division. All testimony and exhibits submitted by the parties were admitted into evidence.

The hearing was continued twice at the Claimant's request to give him additional time (1) to obtain a disability evaluation from DVR, and (2) to obtain a medical opinion from a specialist physician. However, these reports were never provided to this Office, and the Claimant failed to appear at the

hearing of September 14, 2010. Accordingly, at the hearing of September 14, 2010 the record was closed and the case was submitted for decision.

ISSUE

Was the Division correct when, on April 29, 2010, it denied the Claimant's February 9, 2010 application for Interim Assistance benefits based on the assertion that the Claimant did not satisfy the Interim Assistance Program's disability requirements?

SUMMARY OF DECISION

The Claimant satisfies the requirement that he not currently be working. His back pain, muscle pain, and abdominal pain qualify as "severe impairments" based on the applicable regulations, and also satisfy the 12 month durational requirement. The Claimant's back, muscle, and abdominal pain do not satisfy the specific criteria of the Social Security Administration's applicable Listings of Impairments. However, the Claimant's impairments satisfy the alternate regulatory requirements because (1) they prevent the Claimant from performing his prior work, and (2) they prevent the Claimant from performing a full range of sedentary work. The Division was therefore not correct when, on April 29, 2010, it denied the Claimant's February 9, 2010 application for Interim Assistance benefits based on the assertion that the Claimant did not satisfy the Interim Assistance Program's disability requirements.

FINDINGS OF FACT ¹

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

I. Educational and Vocational History.

1. The Claimant was born on [REDACTED], 1975 (Ex. 3.117) and was 35 years old at the time of the hearings held in this case.
2. The record indicates that the Claimant has a 12th grade education (Ex. 3.118); it does not indicate [REDACTED] he graduated from high school or whether he obtained a GED.
3. The Claimant worked at a post office for two years circa 1999-2000 (Exs. 3.031, 3.114). He worked as a counter-person at a video store circa 2003-2004 (Ex. 3.021). However, he has not worked now for "several years." *Id.*
4. Sometimes the Claimant is able to drive; sometimes he has others drive him ([REDACTED] testimony). He does not need an assistive device (cane, etc.) to walk, but he does walk slowly and bent-over. *Id.* He is able to make his own appointments, use the telephone, and prepare paperwork on his own ([REDACTED] testimony).

¹ All of the medical reports in the record (approximately 257 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.

II. Physical Impairments.

5. The Claimant was injured on August 26, 2000 when a heavy bag of mail fell on him while working at the post office (Ex. 3.024). This accident injured his back, caused a hernia, and injured his right testicle (Ex. 3.021).

A. The Claimant's Back (Lumbar) Pain.

6. Since his work-related accident in 2000, the Claimant has had increasing back pain and groin pain (Ex. 3.017). The Claimant had intradiscal electrothermic therapy (IDET), a treatment for back pain, in 2002 (Ex. 3.021). The Claimant had "nerve injections" in his right groin area prior to 2007 (Ex. 2.017). These injections provided only temporary pain relief. *Id.*

7. The Claimant was involved in a motor vehicle accident in 2007 in which his Honda Civic was struck from behind by a Chevrolet Suburban (Ex. 3.115). Following that accident his preexisting lumbar pain and right inguinal² pain were significantly increased (Exs. 3.051, 3.082). A physician who is a specialist in pain medicine recommended epidural steroid injections and physical therapy (Ex. 3.082). The Claimant's lumbar pain improved considerably after epidural steroid injections (Exs. 3.051, 3.082). However, as of April 12, 2007 the Claimant still had some remaining lumbar pain and right inguinal pain even after the injections (Ex. 3.051).

8. A radiological report on the Claimant's lumbosacral spine dated February 14, 2007 states that "a grade 1 spondylolisthesis³ at L5-S1 is noted with narrow disk space at that level," and that "complete spondylolysis⁴ of the facets and pars intraarticularis⁵ of L5-S1 is noted" (Ex. 3.081).

9. A report by Advanced Pain Centers of Alaska dated February 14, 2007 (Exs. 3.021-3.022) states in relevant part that the Claimant's "back exam is most remarkable in that he has almost no range of motion and has quite a bit of muscle spasm in the lower lumbar segment." The report also stated that the Claimant had "prominent myalgia⁶ of the paraspinal muscles in that area." *Id.* The report also opined that the Claimant's work-related injury of August 26, 2000 was the proximate cause of his medical problems, and that lumbosacral spinal fusion surgery would be the best treatment for his condition. *Id.*

² Of, relating to, or situated in the region of the groin or in either of the lowest lateral regions of the abdomen. See Merriam-Webster's online dictionary at <http://www.merriam-webster.com/dictionary/inguinal> (date accessed November 7, 2010).

³ Spondylolisthesis is a forward dislocation of one vertebra over the one beneath it producing pressure on spinal nerves. See Princeton University's online dictionary at <http://wordnetweb.princeton.edu/perl/webwn?s=spondylolisthesis> (date accessed November 7, 2010).

⁴ Spondylolysis is the disintegration or dissolution of a vertebra. See Merriam-Webster's online dictionary at <http://www.merriam-webster.com/medical/spondylolysis> (date accessed November 7, 2010).

⁵ The pars intraarticularis is a region of the vertebra between the superior and inferior facet joints that is susceptible to trauma. See Mosby's Medical Dictionary (8th Edition, Elsevier, 2009).

⁶ Myalgia is pain in a muscle or group of muscles. See Princeton University's online dictionary at <http://wordnetweb.princeton.edu/perl/webwn?s=myalgia> (date accessed November 7, 2010).

10. A radiological report dated February 27, 2007 states that the Claimant had a “mild curvature of the thoracic spine apex right,” but that the x-ray was otherwise normal (Ex. 3.206).

11. As of March 29, 2007, the Claimant’s lumbar pain and right inguinal pain were still uncomfortable to the point where he could not sleep or sit still (Ex. 3.043). At that time the Advanced Pain Centers of Alaska were recommending that the Claimant consider nerve root injections in addition to the epidural steroid injections (Ex. 3.044).

12. A radiological report dated October 14, 2008 states that as of that date the Claimant had possible sigmoid colitis,⁷ probable hemangioma,⁸ and L5 spondylosis (Ex. 3.202).

13. An exam note by [REDACTED] dated December 12, 2008 (Exs. 3.031-3.034) states in relevant part as follows:

History of Present Illness: generalized pain with tingling . . . cutting . . . pressure . . . dull, aching . . . throbbing . . . burning . . . sharp . . . lightening-like . . . shooting quality[ies] Lower back pain worsens with walking . . . urination . . . standing . . . bowel movement . . . exercise . . . coughing/sneezing . . . relieved with medication . . . relieved [by] lying down . . . relieved with relaxation. Pain is significantly affecting quality of life.

* * * * *

Previous Therapy: History of regular exercise gives moderate relief. History of psychiatric therapy gives moderate relief. History of [hypnosis] gives no relief. History of [biofeedback] gives no relief. History of pain management by surgery gives moderate relief. History of pain management by acupuncture gives excellent relief. History of bed rest gives moderate relief. History of physical therapy gives moderate relief. History of heat therapy gives no relief. History of TENS gives moderate relief.

Social History: Job requires heavy labor Unable to walk for more than 100 feet, unable to stand for more than 45 minutes, and unable to sit for more than 6 minutes

* * * * *

Discussed: He is considered totally disabled for his postal duties, and this will probably be a permanent condition

14. An MRI report on the Claimant’s thoracic spine dated July 14, 2009 states in relevant part as follows (Exs. 3.188-3.189):

⁷ Inflammation of the sigmoid colon (that portion of the left colon situated in the pelvis and extending from the descending colon to the rectum). See Princeton University’s online dictionary at <http://wordnetweb.princeton.edu/perl/webwn?s=colitis> (date accessed November 7, 2010).

⁸ A congenital benign skin lesion consisting of dense, usually elevated masses of dilated blood vessels. See The American Heritage Medical Dictionary (Houghton Mifflin Company 2007).

Marrow space is notable for T1 hyperintense lesion in T4 occupying a significant portion of the vertebral body. This . . . is consistent with a hemangioma A very small disc herniation at T6-T7 is seen to the right of midline This produces minimal compromise of the central canal.

15. An MRI report on the Claimant's lumbar spine dated July 14, 2009 states that as of that date the Claimant had early grade 1 spondylolisthesis at L5-S1 (Ex. 3.190).

B. The Claimant's Abdominal Pain.⁹

16. The Claimant's chart notes dated October 21, 2008 state in relevant part that the Claimant presented on that date complaining of fatigue, malaise, feeling cold, stomach and back pain, and weight loss (Exs 3.160-3.161).

17. The Claimant's chart notes dated October 23, 2008 state in relevant part that the Claimant presented on that date complaining of right groin and lower abdominal pain, testicular pain, and difficulty urinating (Exs 3.157-3.159). The external exam performed on that date showed that the Claimant's right testicle was retracted. *Id.*

18. The Claimant's chart notes dated November 4, 2008 state in relevant part that the Claimant presented on that date complaining of severe stomach pain and difficulty breathing (Exs. 3.155-3.156). He was diagnosed as suffering from peptic ulcer disease and was prescribed Nexium and Percocet (Exs. 3.155-3.156).

19. The Claimant's chart notes dated November 10, 2008 state that the Claimant presented on that date complaining of back pain, dizziness, and difficulty breathing (Exs. 3.152-3.154). He was diagnosed as suffering from peptic ulcer disease, abdominal pain, right side inguinal pain, and unspecified noninfectious gastroenteritis¹⁰ and colitis and was prescribed Percocet (Ex. 3.153).

20. A progress note by [REDACTED], M.D. dated November 19, 2008 (Exs. 3.149-3.151) states in relevant part as follows:

History Of Present Illness: Thirty-three year old male who relates an approximately 2 month history of groin/abdominal pain. He has had some chronic pains of his back as well as right testicle which have not changed in their nature. In mid-September, he . . . was doing well with normal appetite and BMs but, subsequent to that, he has had persistent abdominal pains Since the onset of his symptoms, he has had an extensive evaluation which includes evaluation by many physicians, multiple lab tests

⁹ The record indicates that the Claimant has essentially three (3) different types of abdominal pain: (1) testicular pain, (2) pain related to a past hernia and/or hernia repair, and (3) pain related to colitis or other gastro-intestinal problems. An effort has been made to differentiate between these three different medical problems. However, it is not always evident from the medical records as to which of these three different abdominal problems is causing the Claimant's pain at any given time.

¹⁰ An inflammation of the stomach and intestines accompanying numerous gastrointestinal (GI) disorders. The typical symptoms are anorexia, nausea, vomiting, abdominal discomfort, and diarrhea. Mosby's Medical Dictionary, 8th Edition (Elsevier 2009).

and radiologic studies, and trials of medication. He also has had an EGD and colonoscopy.

He has had a full/bloated feeling He has had some abdominal, chest, and throat tightness which seems to have its onset when he walks or rides in a car He was treated with Cipro and Flagyl after his CT scan showed possible sigmoid colitis. After beginning the antibiotics he related that his “whole body” felt cold. Additionally, since starting the antibiotics, he has had to sit on the toilet to pass his urine His “constipation” was OK last week but now is starting all over again he has noted a weight loss At present, his right groin pain is maximal

On that date the Claimant was diagnosed as suffering from peptic ulcer disease, abdominal pain, right side inguinal pain, right side testicular pain, and unspecified noninfectious gastroenteritis and colitis and was prescribed Medrol (Ex. 3.151).

21. A progress note by [REDACTED], M.D. dated December 8, 2008 (Exs. 3.144-3.146) states that, as of that date, the Claimant was still suffering from essentially the same symptoms and had essentially the same diagnoses as during his visit of November 19, 2008 (described above). However, in addition, the Claimant now had mid- and low- back pain and occasional trouble breathing (Ex. 3.145). The Claimant was prescribed Halcion. *Id.*

22. An endoscopy and biopsy of the Claimant’s upper and lower gastro-intestinal tract dated December 10, 2008 indicates that as of that date the Claimant had chronic active gastritis,¹¹ but that otherwise his gastro-intestinal tract was normal (Exs. 3.192 - 3.198).

23. A progress note by [REDACTED], M.D. dated December 30, 2008 (Exs. 3.136-3.138) indicates that, as of that date, the Claimant was still suffering from essentially the same symptoms and had essentially the same diagnoses as during his visit of November 19, 2008 (described above). However, in addition, the Claimant was now also diagnosed with irritable bowel and depression, and was prescribed an anti-depressant. *Id.*

24. A progress note by [REDACTED], M.D. dated February 2, 2009 (Exs. 3.131-3.133) indicates that, as of that date, the Claimant was still suffering from most of the same symptoms and had essentially the same diagnoses as during his visit of December 30, 2008 (described above), except that his depression and problems with urination had improved. *Id.*

25. A progress note by [REDACTED], M.D. dated April 14, 2009 (Exs. 3.126-3.128) indicates that, as of that date, the Claimant had suffered from a flare-up of chronic abdominal pain for 6 days.

26. A progress note by [REDACTED], M.D. dated July 7, 2009 (Exs. 3.114-3.116) indicates that, as of that date, the Claimant was still suffering from essentially the same symptoms and had essentially the same diagnoses as during his visit of December 30, 2008 (described above). However, on that date

¹¹ Gastritis is an inflammation of the stomach lining and can be caused by many factors, including infection, injury, certain drugs, and disorders of the immune system. See Merck Manual (online version) at <http://www.merck.com/mmhe/sec09/ch121/ch121b.html> (date accessed November 7, 2010).

he was given new diagnoses of “thoracic / lumbosacral neuritis¹² / radiculitis,¹³ unspecified,” and “back pain, thoracic region, chronic” (Ex. 3.116).

27. A progress note by [REDACTED], M.D. dated July 21, 2009 (Exs. 3.111-3.113) indicates that, as of that date, the Claimant was still suffering from essentially the same symptoms and had essentially the same diagnoses as during his visit of July 7, 2009 (described above). Dr. [REDACTED] ordered a bone scan and scans of the Claimant’s upper and lower gastrointestinal tract (Ex. 3.112).

28. A progress note by [REDACTED], M.D. dated August 13, 2009 (Exs. 3.108-3.110) indicates that, as of that date, the Claimant presented complaining of malaise, constipation, problems urinating, abdominal pain, and back pain. His diagnoses were essentially the same as during his visit of July 7, 2009 (described above) (Ex. 3.109).

C. The Claimant’s Generalized Muscle Pain.

29. A progress note by [REDACTED], M.D. dated November 25, 2009 (Exs. 3.096-3.098) indicates that the Claimant presented on that date complaining of pain, tingling, and numbness in his left and right hand, arms, and legs for the last month. He was given a new diagnosis of muscle pain and five different lab tests were ordered. *Id.*

30. A progress note by [REDACTED], M.D. dated December 1, 2009 (Exs. 3.093-3.095) indicates that the Claimant presented on that date complaining that “all [his] muscles [felt] like they [were] tearing,” both with use and at rest, and that it was “hard to breath.” He was given a new diagnosis of chronic anxiety (Ex. 3.095). Dr. [REDACTED] also indicated that the Claimant might “be dealing with fibromyalgia.”¹⁴ *Id.*

31. A progress note by [REDACTED], M.D. dated December 15, 2009 (Exs. 3.090-3.092) indicates that the Claimant presented on that date with no change in his generalized muscular pain. The Claimant related that the more he exerted, the weaker he would feel (Ex. 3.091). As of that date the Claimant was taking the following prescription medications: Aleve, Amitiza, Colace, Famotidine, Flexeril, Hydrocodone-Acetaminophen, Naproxen, and Valium (Ex. 3.090).

III. Mental Impairments.

32. The Claimant also suffers from chronic depression (Ex. 3.003).¹⁵

¹² An inflammatory or degenerative lesion of a nerve marked especially by pain, sensory disturbances, and impaired or lost reflexes. *See* Merriam-Webster’s online dictionary at <http://dictionary.merriam-webster.com/dictionary/neuritis> (date accessed November 7, 2010).

¹³ An inflammation involving a spinal nerve root, resulting in pain and hyperesthesia. *Mosby's Medical Dictionary, 8th Edition (Elsevier 2009).*

¹⁴ Fibromyalgia is a form of nonarticular rheumatism characterized by musculoskeletal pain, spasms, stiffness, fatigue, and severe sleep disturbance. Common sites of pain or stiffness include the lower back, neck, shoulder region, arms, hands, knees, hips, thighs, legs, and feet. These sites are known as trigger points. Physical therapy, nonsteroidal antiinflammatory drugs, and muscle relaxants provide temporary relief. *Mosby's Medical Dictionary, 8th Edition (Elsevier 2009).*

¹⁵ Given the disposition of this case, it is not necessary to discuss the Claimant’s chronic depression in any detail.

IV. Procedural Facts.

33. A *Preliminary Examination for Interim Assistance* (Form AD#2) prepared by [REDACTED], M.D. dated February 6, 2010 (Exs. 3.002–3.003) states in relevant part (a) that the Claimant’s diagnoses are chronic depression, chronic abdominal pain, and muscle pain; (b) that the Claimant is not expected to recover from these conditions.

34. On April 28, 2010 the Division’s Medical Reviewer, [REDACTED], R.N., denied the Claimant’s application for Interim Assistance because “it appeared likely that the [Claimant] could engage in work requiring simple routine repetitive non-stressful tasks (Exs. 3.001, 5.1).

35. As of the hearing of July 27, 2010, the Claimant was still suffering from the several medical problems described in the preceding paragraphs ([REDACTED] testimony).

PRINCIPLES OF LAW

Introduction; Burden of Proof; Standard of Proof.

This case involves an application for Interim Assistance benefits. When an application is denied and a hearing is requested, the applicant has the burden of proof¹⁶ by a preponderance of the evidence.¹⁷

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 40.180.¹⁸

¹⁶ “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).

¹⁷ 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).

¹⁸ 7 AAC 40.180, titled “initial determination of disability”, provides as follows:

(a) An applicant whose disability is being determined by the department under 7 AAC 40.170(b) must be examined by a psychiatrist or other physician who has entered into a current provider agreement under 7 AAC 43.065. The results of the examination must be provided on a form approved by the department.

(b) The department will make a determination of whether the applicant is disabled based on

(1) a medical review by the department as to whether the applicant is likely to be found disabled by the Social Security Administration, including whether the applicant's impairment meets (A) The SSI program's presumptive disability criteria under 20 C.F.R. 416.934, as revised as of April 1, 2005, and adopted by reference; or (B) Social Security Administration disability criteria for the listings of impairments described in 20 C.F.R. 404, subpart P, appendix 1, as revised as of April 1, 2005, and adopted by reference;

(2) medical evidence provided by the applicant or obtained by the department;

(3) other evidence provided by the applicant under 7 AAC 40.050, if applicable; and

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 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, and no further analysis is needed. 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 Physical Impairments.

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.” 20 C.F.R. 404.1521(a);

(4) a review of the written results of the psychiatrist's or other physician's examination under (a) of this section.

(c) In determining whether an applicant's disability meets the criteria set out in (b)(1)(B) of this section, the department will consider whether

- (1) the applicant's condition is listed as an impairment category described in (b)(1)(B) of this section;
- (2) the medical information obtained under (b) of this section documents the applicant's impairment;
- (3) the impairment affects the applicant's activities of daily living;
- (4) the applicant can perform any other work, including sedentary work; and
- (5) the applicant's impairment has lasted or is expected to last for a continuous period of not less than 12 months.

20 CFR 416.920(c); 20 CFR 416.921(a). Social Security Regulation 20 CFR 416.921(b) defines “basic work activities.” That regulation states in relevant part as follows:

. . . basic work activities [mean] the abilities and aptitudes necessary to do most jobs [such as] (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.

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); *Walters v. Commissioner of Social Security*, 127 F.3d 525, 529-30 (6th Cir. 1997); 20 C.F.R. § 404.1527(d)(2).

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.¹⁹ 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 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 impairment(s) satisfy all 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).

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

¹⁹ 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.

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.

If the 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). 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). However, if it is determined that the applicant cannot perform his or her *previous relevant work*, it is necessary to proceed to the next step in the analysis and determine whether the applicant can perform 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 work or jobs. If the applicant is not capable of performing other work, he or she is disabled. 20 CFR 416.920(a)(4)(v).

Pursuant to 20 CFR 416.967, “sedentary work” is defined as follows:

(a) Sedentary work. 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 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.

At this final stage of the disability analysis, 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 that 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).

In many circumstances a decision on whether a claimant is disabled can be made using the Social Security Administration's Medical-Vocational Guidelines (located at 20 CFR, Part 404, Subpart P, Appendix 2). These guidelines, known as "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 Grids" cannot, however, be mechanically applied in all cases. *See Asher v. Bowen*, 837 F.2d 825, 827-28 (8th Cir.1988). Specifically, the Grids cannot be applied where a person suffers from *nonexertional impairments* that significantly impact that person's ability to perform the full range of work (such as sedentary or light work). *See Foreman v. Callahan*, 122 F.3d 24, 25 (8th Cir.1997).

Nonexertional impairments are limitations on a person's ability to maintain attention, concentrate, remember, etc. (20 CFR 416.969a(c)). Pain is considered a nonexertional impairment. *E.g.*, *Baker v. Barnhart*, 457 F.3d 882, 894 (8th Cir.2006); *Haley v. Massanari*; 258 F.3d 742, 747 (8th Cir.2001); *Cline v. Sullivan*, 939 F.2d 560, 565 (8th Cir.1991); *Prince v. Bowen*, 894 F.2d 283, 287 (8th Cir.1990).

When a claimant is limited by a *nonexertional impairment*, such as pain or mental incapacity, the SSA (and thus the Division) may not rely on "the Grids" and must instead present testimony from a vocational expert to support a determination of no disability. *See Haley v. Massanari*, 258 F.3d 742, 747-48 (8th Cir.2001); *Vincent v. Apfel*, 264 F.3d 767, 769 (8th Cir.2001); *Baker v. Barnhart*, 457 F.3d 882, 894-95 (8th Cir.2006); *see also Ellis v. Barnhart*, 392 F.3d 988, 996 (8th Cir.2005); Social Security Ruling 83-47C, 1983 WL 31276 (S.S.A.1983) ("[I]f the nonexertional limitation restricts a claimant's performance of a full range of work at the appropriate [RFC] level, nonexertional limitations must be taken into account and a nonguideline determination made").

ANALYSIS

Introduction.

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

The record in this case supports the Claimant's assertion of three (3) physical (non-psychological) impairments (*see Findings of Fact*, above). These are best described as back pain, muscle pain, and abdominal pain. The Claimant's back pain is categorized under SSA Impairment Listing No. 1.04 ("Disorders of the Spine"). The Claimant's generalized muscle pain and the Claimant's abdominal pain do not fall within any specific SSA impairment listing or category.

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." The evidence in the record is that the Claimant has not worked now for "several years"

(Ex. 3.021). This evidence was not disputed by the Division. Accordingly, the Claimant has carried his burden and has proven, by a preponderance of the evidence, that he 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 his 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 20 CFR §§ 404.1520(c) and 416.920(c).

The Claimant’s medical records indicate that his physical impairments significantly limit his ability to perform physical functions such as walking, standing, and sitting. An exam note dated December 12, 2008 (Exs. 3.031-3.034) states in relevant part that the Claimant’s back pain “worsens with walking . . . standing . . . [and] exercise,” and that the Claimant is “unable to walk for more than 100 feet, unable to stand for more than 45 minutes, and unable to sit for more than 6 minutes.”

Substantial weight must be given to the opinion, diagnosis and medical evidence of a medical provider unless there is good cause to do otherwise. 20 C.F.R. § 416.1527(d); see also *Lewis v. Callahan*, 125 F.3d 1436, 1440 (11th Cir. 1997). There is no evidence in the record to indicate that the Claimant’s medical reports are biased or otherwise untrustworthy. In the absence of recent contradicting medical evidence, these medical reports must be accepted as credible.

Accordingly, the Claimant has carried his burden and proven, by a preponderance of the evidence, that his back pain, muscle pain, and abdominal pain constitute “severe impairments” 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 impairments satisfy the twelve month durational requirement.

III. Do the Claimant’s Impairments Satisfy the 12 Month Durational Requirement?

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

The Claimant’s back and abdominal pain began on August 26, 2000 when a heavy bag of mail fell on the Claimant while he was working at the post office (Exs. 3.021, 3.024). The Claimant’s generalized

²⁰ 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.

muscle pain dates only to November 25, 2009 (Exs. 3.096-3.098), but is expected to continue indefinitely (Exs. 3.002–3.003). The Division did not dispute these facts.

In summary, the Claimant’s back pain and abdominal pain meet the 12 month durational requirement because they have existed for over ten (10) years. The Claimant’s generalized muscle pain also meets the 12 month durational requirement because, although at this time it has existed for approximately eleven (11) months, it is expected to continue indefinitely. Accordingly, the Claimant has proven, by a preponderance of the evidence, that his impairments satisfy the 12 - month durational requirement. It is therefore necessary to proceed to the next step in the Social Security disability analysis and to determine whether the Claimant’s impairments meet the criteria of the Social Security Administration’s relevant Listing of Impairments.

IV. Do the Claimant’s Impairments Meet the Criteria of the Social Security Administration’s Relevant Listings of Impairments?

The next step is to decide whether the Claimant’s impairments (back pain, abdominal pain, and generalized muscle pain) meet the criteria of the Social Security Administration’s relevant Listing of Impairments. The Social Security Administration’s Listing of Impairments is located at 20 CFR Part 404, Subpart P, Appendix 1.

The Claimant’s back pain is categorized generally under “Category of Impairments, Musculoskeletal” (20 CFR Part 404, Subpart P, Appendix 1, Section 1.00). The specific categorization of the Claimant’s back pain is under Section 1.04 (“Disorders of the Spine”).²¹

The medical evidence in the record shows that the Claimant’s back pain does not satisfy the *clinical* requirements of Section 1.04 (*see* Findings of Fact at Paragraphs 6-15, above and footnote 21). The Claimant’s back pain likewise fails to satisfy the *functional* requirements of Section 1.04 because, although he has difficulty walking very far, the Claimant can still walk without the use of a walker, two crutches, or two canes (*see* Listing Section 1.00(B)(2)(b)²² and Findings of Fact at Paragraph 4,

²¹ Listing Section 1.04, titled “Disorders of the spine, ” requires in relevant part as follows:

[H]erniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or [subsection (B) inapplicable and therefore deleted] or

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

²² Listing Section 1.00(B)(2)(b), titled “What We Mean by Inability to Ambulate Effectively,” provides in relevant part as follows:

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

above). Accordingly, the Claimant's back pain does not meet the "inability to ambulate" requirement of Listings Sections 1.02 and 1.04.

Review of "the Listings" shows that the Claimant's abdominal pain and generalized muscle pain do not fall within any specific SSA impairment listing or category. *See* 20 CFR Part 404, Subpart P, Appendix 1. Accordingly, although the Claimant's abdominal pain and generalized muscle pain may be significant, they do not "meet the Listings."

In summary, the Claimant failed to prove, by a preponderance of the evidence, that any of his three (3) impairments (back pain, abdominal pain, and generalized muscle pain) meet or equal the requirements of "the Listings" (20 CFR Part 404, Subpart P, Appendix 1). Accordingly, it is necessary to proceed to the next question in the disability analysis: whether or not the Claimant's impairments prevent him from performing his *past relevant work* (20 CFR 404.1560(a)).

V. Can the Claimant Perform His *Past Relevant Work*?

The next issue, pursuant to 20 CFR 404.1560(a), is whether the Claimant's impairments prevent him from performing his *past relevant work*. The Claimant has the burden of proving that his impairments prevent him from performing his past relevant work by a preponderance of the evidence. *See* Principles of Law, above.

The Social Security disability regulations define "*past relevant work*" as "work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it." *See* 20 CFR 404.1560(b)(1).

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 Division did not assert that the Claimant is able to perform his *past relevant work*. Rather, the Division's Medical Reviewer denied the Claimant's application for Interim Assistance only because "it appeared likely that the [Claimant] could engage in work requiring simple routine repetitive non-stressful tasks" (Exs. 3.001, 5.1).

The record indicates that the Claimant's only "*past relevant work*" was his work at a post office for two years circa 1999-2000 (Exs. 3.031, 3.114) and his work as a counter-person at a video store circa 2003-2004 (Ex. 3.021).

An exam note by [REDACTED], M.D. dated December 12, 2008 (Exs. 3.031-3.034) states in relevant part 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 . . . [E]xamples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail . . .

Social History: Job requires heavy labor [Claimant is] [u]nable to walk for more than 100 feet, unable to stand for more than 45 minutes, and unable to sit for more than 6 minutes

* * * * *

Discussed: [The Claimant] is considered totally disabled for his postal duties, and this will probably be a permanent condition

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); *Walters v. Commissioner of Social Security*, 127 F.3d 525, 529-30 (6th Cir. 1997); 20 C.F.R. § 404.1527(d)(2). This is particularly true where (as here) *the Division never asserted that the Claimant could still perform his prior work*. Accordingly, the Claimant has proven, by a preponderance of the evidence, that he is unable to perform his *past relevant work*. It is therefore necessary to proceed to the final step in the disability analysis and determine whether the Claimant can perform other work.

VI. Do The Claimant's Impairments Prevent Him From 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.

A. The Burden of Proof Shifts to the Division.

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 that 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).

B. "The Grids" Can Be Applied in Some, But Not All, Cases.

In many circumstances a decision on whether a claimant is disabled can be made using the Social Security Administration's Medical-Vocational Guidelines (located at 20 CFR, Part 404, Subpart P, Appendix 2). These guidelines, known as "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).

"If [a claimant's] impairments are exertional (affecting the ability to perform physical labor), the Commissioner [in this case the Division] may carry [its] burden by referring to the medical-vocational guidelines or 'grids,' which 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).

If the Claimant's impairments were purely *exertional* (i.e. if the issue was simply whether he has the physical strength to walk, sit, stand, and perform the requirements of the job – see 20 CFR 416.969a(a)), then Rule 201 of “the Grids” would apply (“Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s)”). The specific sub-rule that would apply is Rule 201.27. According to that rule, where (as here) a claimant is age 18-44, is a high school graduate / GED holder, and has performed unskilled work, the claimant is deemed *not* to be disabled.

The Grids cannot, however, be applied where a person suffers from *nonexertional impairments* that significantly impact that person's ability to perform the full range of work. See *Foreman v. Callahan*, 122 F.3d 24, 25 (8th Cir.1997). *Nonexertional impairments* are limitations on a person's ability to maintain attention, concentrate, remember, etc. (20 CFR 416.969a(c)).²³ Pain has long been considered a nonexertional impairment. E.g., *Baker v. Barnhart*, 457 F.3d 882, 894 (8th Cir.2006); *Haley v. Massanari*; 258 F.3d 742, 747 (8th Cir.2001); *Cline v. Sullivan*, 939 F.2d 560, 565 (8th Cir.1991); *Prince v. Bowen*, 894 F.2d 283, 287 (8th Cir.1990).

There is ample medical evidence indicating that the Claimant is often in a significant amount of pain as a result of his back and abdominal injuries, and that he also has generalized muscle pain. See Findings of Fact at Paragraphs 6, 7, 9, 11, 13, 16-21, 25, and 28-31, above. There is no evidence in the record indicating that the Claimant's physicians felt that he was malingering.

Accordingly, the Claimant's pain qualifies as a *nonexertional impairment*. For this reason, the Claimant's case cannot be decided using “the Grids,” and the Division must present vocational evidence proving by a preponderance of the evidence that the Claimant can perform sedentary or other work.

C. Because “The Grids” Cannot Be Applied Here, The Division Must Present Vocational Evidence to Carry Its Burden.

When a claimant is limited by a *nonexertional impairment*, such as pain or mental incapacity, the SSA (and thus the Division) may not rely on “the Grids” and must instead present testimony from a vocational expert to support a determination of no disability. See *Haley v. Massanari*, 258 F.3d 742, 747-48 (8th Cir.2001); *Vincent v. Apfel*, 264 F.3d 767, 769 (8th Cir.2001); *Baker v. Barnhart*, 457 F.3d 882, 894-95 (8th Cir.2006); see also *Ellis v. Barnhart*, 392 F.3d 988, 996 (8th Cir.2005); Social Security Ruling 83-47C, 1983 WL 31276 (S.S.A.1983) (“[I]f the nonexertional limitation restricts a claimant's performance of a full range of work at the appropriate [RFC] level, nonexertional limitations must be taken into account and a nonguideline determination made.”).

The Division asserts that the Claimant can still perform sedentary work (Exs. 3.001, 5.1). However, the Division presented no evidence that the Claimant's impairments still permit the types of activity necessary for other occupations; that the Claimant's experience is transferable to other work; or that

²³ “Nonexertional capacity considers any work-related limitations and restrictions that are not exertional. .” SSR 96-9p, 1996 WL 374185 at 5 (Soc. Sec. Admin. July 2, 1996). Therefore, a nonexertional limitation is an impairment-caused limitation affecting such capacities as mental abilities, vision, hearing, speech, climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering, and feeling. *Id.* Environmental restrictions are also considered to be nonexertional. *Id.*

specific types of jobs exist which are suitable for the Claimant, as required by 20 CFR 404.1562(c)(2). The Division simply presented no evidence to support its position that the Claimant can perform sedentary or other work. Accordingly, the Division has failed to carry its burden of proof at this step of the disability analysis.²⁴ Because the Division failed to prove that the Claimant can perform sedentary or other work, the Claimant is deemed to be disabled.

CONCLUSIONS OF LAW

1. The Claimant carried his burden and proved, by a preponderance of the evidence:
 - a. That he is not currently engaged in substantial gainful activity as defined by 20 CFR 404.1510.
 - b. That his physical impairments of (a) back pain, categorized under SSA Impairment Listing No. 1.04 (“Disorders of the Spine”); (b) generalized muscle pain, and (c) abdominal pain (which do not fall within any specific SSA impairment listing or category), constitute “severe impairments” as defined by 20 CFR §§ 404.1520(c), 416.920(c), and 416.921(b).
 - c. That his back pain, categorized under SSA Impairment Listing No. 1.04 (“Disorders of the Spine”); and his generalized muscle pain and abdominal pain (which do not fall within any specific SSA impairment listing or category), have lasted or can be expected to last for 12 months or longer, and the Claimant therefore satisfies the durational requirements of 20 CFR 416.909 and 20 CFR 416.920(a)(4)(ii).
2. The Claimant failed to carry his burden and did not prove, by a preponderance of the evidence, that his physical impairments of (a) back pain, categorized under SSA Impairment Listing No. 1.04 (“Disorders of the Spine”); (b) generalized muscle pain, and (c) abdominal pain (which do not fall within any specific SSA impairment listing or category), meet or medically equal the requirements of the Social Security Administration’s applicable Listing of Impairments (20 CFR Part 404, Subpart P, Appendix 1, Sections 1.02 and 1.04).
3. The Claimant carried his burden and proved, by a preponderance of the evidence, that he is not capable of performing his *past relevant work*.
4. Because the Claimant’s impairments involve pain, and pain is a *nonexertional impairment*, “the Grids” (20 CFR, Part 404, Subpart P, Appendix 2) cannot be mechanically applied, and the burden shifts to the Division to show that the Claimant can perform sedentary or other work.
5. The Division failed to carry its burden and did not prove, by a preponderance of the evidence, that the Claimant is capable of performing sedentary or other work.
6. The Division was therefore not correct when, on April 29, 2010, it denied the Claimant’s February 9, 2010 application for Interim Assistance benefits based on the assertion that the Claimant did not satisfy the Interim Assistance Program’s disability requirements.

²⁴ 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 currently provide the parties or this Office with a vocational expert, who would normally present this important evidence.

DECISION

The Division erred when, on April 29, 2010, it denied the Claimant's February 9, 2010 application for Interim Assistance benefits based on the assertion that the Claimant did not satisfy the Interim Assistance Program's disability requirements.

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
PO 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 8th day of November, 2010.

(signed)

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 8th day of November 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], Chief of Field Services, DPA
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], Administrative Assistant II
[REDACTED], Eligibility Technician I

(signed)

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