

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

In the Matter of)	
)	OAH No. 12-0750-APA
S T)	Division No.
_____)	

FAIR HEARING DECISION

I. Introduction

ST applied for Interim Assistance on July 30, 2012.¹ A disability adjudicator employed by the Division of Public Assistance (Division) concluded that Mr. T was physically impaired but that he did not qualify for Interim Assistance. The Division notified Mr. T that his application was denied. He requested a hearing.

Mr. T's hearing was held on November 7, 2012. Chelsea Hicks, with Alaska Legal Services Corporation, represented him. Mr. T testified on his own behalf. Jeff Miller, Public Assistance Analyst with the Division, represented the Division.

This decision concludes that Mr. T is severely physically impaired and that his impairment meets the 12-month durational requirements. However, Mr. T's physical impairment does not meet or equal the Social Security disability listings. As a result, Mr. T does not satisfy the Interim Assistance program's eligibility requirement that he be "likely to be found disabled by the Social Security Administration."² The Division's decision denying his Interim Assistance application is AFFIRMED.

II. Facts³

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

Mr. T is 33 years old. He has a GED and an associate's degree in automotive technology. He has severe sleep apnea which requires him to sleep with a CPAP machine. He also has high blood pressure and high cholesterol.

Mr. T injured his back on a weekend in May 2011. He went to his job as an auto mechanic the following Monday and has not been able to go back to work since that day due to his pain. His back pain has gotten progressively worse since then. His pain prevents him from

¹ Ex. 2.

² See 7 AAC 40.180(b)(1).

³ The following facts are taken from Mr. T's testimony unless stated otherwise.

performing the lifting, stooping, bending, reaching, and crawling that automotive work requires. He experiences continuous pain that he rates as being between a six and an eight on a ten point scale on an average day, and as over a ten on a bad day. He has a couple of bad days each week.

Mr. T can stand for up to approximately 15 minutes at a time. He can only lift approximately a half gallon of water. He cannot lift a laundry basket or take out the garbage because he cannot lift anything that heavy. When he tries to cook or do dishes, he can only perform those tasks for up to ten minutes before he has to rest due to the pain. He walks using one cane, and can only walk slowly for a few minutes before needing to stop. He uses a cane for support when he sits down and gets up from sitting. It hurts to sit. When he goes grocery shopping he uses a motorized cart.

Mr. T went to physical therapy for several months after his accident. The last time he went to physical therapy was in September 2011, when he was told that there was nothing else that physical therapy could do for him. He is only being treated for his pain right now.

Mr. T's application was supported by an August 1, 2012 "Preliminary Examination for Interim Assistance" form. That form stated his diagnoses were "Degenerative Disc Disease of Lumbar Spine, Lumbar Facet Syndrome, Chronic Pain Back" and hypertension. The form stated that it was unknown whether he would recover, and that "[h]e may never recover, but expected improvement with advanced medical treatment."⁴

Mr. T had electro diagnostic studies conducted in 2010 that showed he had "acute left C8 and T1 radiculopathy, chronic left C5, C6, C7 C8 radiculopathy."⁵ In addition, he had several MRIs performed. One of his cervical spine, from February 22, 2010, shows that he had severe left-sided foraminal stenosis at C5-6, mild left-sided exit foraminal stenosis at C4 – 5 and C6 – 7, and mild central spinal canal stenosis at C3 – 4 through C6 – 7.⁶ Another, from September 2011, shows degenerative disk changes at L4-5 and S1.⁷ The most recent is of his lumbar spine, which was taken on June 28, 2012. That MRI shows that he has "mild disk disease at the L4 – L5 and L5 – S1 levels with mild to moderate neuroforaminal encroachment" and a "hemangioma within the left sacral ala area of L1."⁸ His June 28, 2012 MRI was reviewed by Dr. Wright with Alaska Neuroscience Associates, who did not find anything on the MRI "that explains his disabling

⁴ Ex. 3.3.

⁵ Ex. 3.12.

⁶ Ex. 3.11.

⁷ Ex. 3.13.

⁸ Ex. 3.17.

pain” and “asked him to obtain diagnostic facet injections at L5-S1 and also . . . asked him to obtain laboratory studies to rule out spondyloarthropathy.”⁹ Mr. T had an antalgic¹⁰ gait and used a cane during his June 20 and July 6, 2012 doctor’s visits.¹¹ On both examination dates, he tolerated a straight leg raise to “90 degrees bilaterally.”¹² As of July 6, 2012, Mr. T’s blood pressure was 113/72.¹³

Mr. T has not been able to afford the diagnostic tests that Dr. Wright recommended.

Laura Ladner, the Division’s medical reviewer, determined that Mr. T was not likely to meet the Social Security Administration’s (SSA) disability criteria based upon either his hypertension or his spinal condition (degenerative disk disease, lumbar facet syndrome, and chronic back pain).¹⁴ The Division then denied his application for Interim Assistance.¹⁵

III. Discussion

A. The Three Step Disability Determination Process

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”¹⁶ Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income (SSI) benefits.¹⁷ Once an applicant is approved for SSI benefits, he or she is then eligible to receive Adult Public Assistance benefits.¹⁸

Interim Assistance is a monthly payment in the amount of \$280 provided by the State to Adult Public Assistance applicants while they are waiting for the SSA to approve their SSI application.¹⁹

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”²⁰ An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.²¹

⁹ Ex. 3.15.

¹⁰ Antalgic is defined as “counteracting or avoiding pain, as a posture or gait assumed so as to lessen pain.” *Dorland’s Illustrated Medical Dictionary* 98 (31st Ed., 2007).

¹¹ Exs. 3.9, 3.13.

¹² Exs. 3.9, 3.13.

¹³ Ex. 3.9.

¹⁴ Exs. 7 – 7.1.

¹⁵ Exs. 8 – 8.1.

¹⁶ AS 47.25.430.

¹⁷ 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the SSI standards are not required to apply for SSI benefits. 7 AAC 40.170(a).

¹⁸ 7 AAC 40.030(a); 7 AAC 40.170(a).

¹⁹ 7 AAC 40.170(a) and (b); AS 47.25.455.

The SSA uses a five-step evaluation process in making its disability determinations.²² Each step is considered in order, and if the SSA finds the applicant either disabled or not disabled at any step, it does not consider subsequent steps.²³

The Division uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.²⁴ The first step looks at the applicant's current work activity. If the applicant is performing "substantial gainful activity," the applicant is not disabled.²⁵ If the applicant is not performing "substantial gainful activity," it is necessary to proceed to step two.

The second step requires the evaluation of the severity and duration of the applicant's impairment. Medical evidence, which consists of "signs, symptoms, and laboratory findings, not only [the applicant's] statement of symptoms," is required to establish an applicant's impairment.²⁶ In order to be considered disabled, the impairment or combination of impairments must be severe²⁷ and must be expected to result in death or must have lasted or be expected to last at least 12 months.²⁸ If the impairment is not severe or does not meet the duration requirement, then the applicant is not disabled. If the impairment is severe and meets the duration requirements, then it is necessary to proceed to step three.

The third step requires the evaluation of whether the impairment meets or equals one of the disability listings adopted by the SSA. By regulation, the Division does not use the most current version of the SSA disability listings. Instead, it is required to use the "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."²⁹ If an applicant's impairment meets or equals one of the applicable SSA disability listings, the

²⁰ 7 AAC 40.180(b)(1).

²¹ 2 AAC 64.290(e).

²² 20 C.F.R. § 416.920.

²³ 20 C.F.R. § 416.920(a)(4).

²⁴ *In re M. H.*, OAH Case No. 12-0688-APA. (Commissioner of Health and Social Services 2012)

<http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf> at 2.

²⁵ 20 C.F.R. § 416.920(a)(4)(i).

²⁶ 20 C.F.R. § 416.908.

²⁷ A severe impairment is one that "significantly limits [a person's] physical or mental ability to do basic work activities." 20 C.F.R. § 416.920(c).

²⁸ 20 C.F.R. § 416.920(a)(4)(ii); 20 C.F.R. § 416.909.

²⁹ 7 AAC 40.180(b)(1)(B). The SSA disability listings are located at 20 C.F.R. Pt. 404, Subpart P, Appendix 1. The version of those listings in effect as of April 1, 2005 is located online at <http://www.gpo.gov/fdsys/pkg/CFR-2005-title20-vol2/pdf/CFR-2005-title20-vol2-part404-subpartP-app1.pdf>

applicant is disabled³⁰ and qualifies for Interim Assistance. If the applicant's impairment does not meet or equal one of the SSA listings, the applicant does not qualify for Interim Assistance.³¹

B. Application of the Three Step Process

The Division's decision to deny Mr. T's application was based upon the review by Laura Ladner, its medical reviewer. She determined that Mr. T was not working and satisfied step one of the Social Security Disability analysis. She found that his high blood pressure did not satisfy step two – it was not a severe impairment because it was within normal limits and that he was not reporting “any symptoms consistent with uncontrolled hypertension.”³² She determined that Mr. T's spinal condition (degenerative disk disease, lumbar facet syndrome, and chronic back pain) did satisfy step two, severity and duration, of the Social Security disability analysis. She, however, determined it did not satisfy step three because it did not meet or equal the appropriate disability listing for disorders of the spine.³³ Both of Mr. T's conditions are addressed below.

1. Hypertension

There is very limited evidence regarding Mr. T's hypertension. He has a medical diagnosis of hypertension. His blood pressure as of July 2, 2012 was within normal limits – 113/72. There is no evidence in the record showing that his ability to function is impaired by his hypertension. In order to qualify as a severe impairment, his hypertension must “significantly limit[] [his] physical or mental ability to do basic work activities.”³⁴ Because the limited evidence does not show any limitation imposed by Mr. T's hypertensive condition, it does not qualify as a severe impairment.

2. Spinal Conditions

Mr. T's physician diagnosed him with several spinal conditions: degenerative disk disease, lumbar facet syndrome, and chronic back pain. These fall with the SSA listing for disorders of the spine (listing 1.04).³⁵

The specific listing for disorders of the spine requires that Mr. T have a “compromise of a nerve root (including the cauda equina) or the spinal cord” along with other criteria.³⁶ The

³⁰ 20 C.F.R. § 416.920(a)(4)(iii) and (d).

³¹ *In re M. H.*, OAH Case No. 12-0688-APA. (Commissioner of Health and Social Services 2012) <http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf> at 2.

³² Exs. 7 – 7.1.

³³ Exs. 7 – 7.1.

³⁴ 20 C.F.R. § 416.920(c).

³⁵ *See* 20 C.F.R. § Pt 404, Subpart P, Appendix 1, § 1.04.

³⁶ 20 C.F.R. § Pt 404, Subpart P, Appendix 1, § 1.04.

medical evidence in the record shows that he has radiculopathy³⁷, stenosis³⁸ of the cervical spine, foraminal encroachment of the lumbar spine, degenerative disc changes, and a hemangioma.³⁹ However, the medical evidence does not state that his nerve roots, cauda equina⁴⁰, or spinal cord are compromised, nor does it contain sufficient information from which compromise can be inferred.

Mr. T's severe pain, which affects his ability to walk and other physical activities, would only be a factor if he had medical evidence that his nerve roots, cauda equina, or spinal cord were compromised and he had "lumbar spinal stenosis result into 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."⁴¹ As noted above, there is no medical evidence in the record showing compromise of his nerve roots, cauda equina, or spinal cord. Without that showing, he does not meet the listing, regardless of his pain levels and how they affect his physical activities. Mr. T therefore does not meet or equal the specific listing for disorders of the spine. As a result, he does not satisfy step three of the SSA disability determination process, which means he does not qualify for Interim Assistance benefits based upon his spinal conditions.

IV. Conclusion

Mr. T did not meet his burden of proving that he is likely to be found disabled by the Social Security Administration due to his physical impairments. As a result, the Division's decision to deny his application for Interim Assistance benefits is AFFIRMED.

DATED this 6th day of December, 2012.

Signed

Lawrence A. Pederson
Administrative Law Judge

³⁷ Radiculopathy is defined as "disease of the nerve roots." *Dorland's Illustrated Medical Dictionary* 1595 (31st Ed., 2007).

³⁸ Spinal stenosis is defined as a "narrowing of the vertebral canal, nerve root canals, or intervertebral foramina of the lumbar spine caused by encroachment of bone upon the space." *Dorland's Illustrated Medical Dictionary* 1795 (31st Ed., 2007).

³⁹ A hemangioma is a "vascular malformation." *Dorland's Illustrated Medical Dictionary* 842 (31st Ed., 2007).

⁴⁰ The cauda equina is "the collection of spinal roots that descend from the lower part of the spinal cord and occupy the vertebral canal below the cord." *Dorland's Illustrated Medical Dictionary* 313 (31st Ed., 2007).

⁴¹ 20 C.F.R. § Pt 404, Subpart P, Appendix 1, § 1.04(C).

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 20th day of December, 2012.

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

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