

Office of Hearings and Appeals  
3601 C Street, Suite 1322  
P. O. Box 240249  
Anchorage, AK 99524-0249  
Ph: (907)-334-2239  
Fax: (907)-334-2285

**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of )  
 )  
 [REDACTED], ) OHA Case No. 10-FH-222  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Interim Assistance on March 10, 2010. (Ex. 1) The Claimant requested a fair hearing on June 6, 2010, before the Division of Public Assistance (Division) had taken any action on his application. (Ex. 2; [REDACTED] testimony) On July 16, 2010, the Division sent the Claimant notice that his application for Interim Assistance was denied. (Ex. 7)

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

Pursuant to Claimant's request, a hearing was held on August 3, 2010. The Claimant appeared telephonically, represented himself and testified on his own behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person and represented the Division.

**ISSUE**

Was the Division correct to deny the Claimant's March 10, 2010 application for Interim Assistance benefits on July 16, 2010 because the medical evidence allegedly did not support his disability claim?

**SUMMARY OF DECISION**

The Claimant is severely physically impaired and unable to perform his previous relevant work. His medically documented physical impairments present a combination of exertional and non-exertional limitations that limit his ability to perform a full range of sedentary work. As a result, he has met his burden of proof and established that he is disabled according to Social Security criteria. The Division was therefore not correct when it denied the Claimant's March 10, 2010 application for Interim Assistance benefits on July 16, 2010.

## FINDINGS OF FACT

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

1. The Claimant is currently 47 years old (birth date [REDACTED]). (Ex. 1) He has a GED. (Claimant testimony)
2. The Claimant's work experience was in construction. (Claimant testimony) He operated heavy equipment doing underground construction and excavating ditches. *Id.* He has no experience performing office work. *Id.* He has not worked in five years. *Id.*
3. The Claimant fractured his right wrist, which was operated on in late 2006 with 2 screws placed in the wrist. (Exs. 6.4, 6.6, 6.13 - 6.22) As of January 2008, the wrist was well healed, but he was still experiencing wrist pain. (Exs. 6.13 – 6.14)
4. On April 13, 2010, the Claimant was examined by Dr. [REDACTED], M.D. (Exs. 6.4 – 6.5) Dr. [REDACTED]' examination notes state as follows:

He has not worked for several years from a motorcycle accident 5 yrs ago. He states that he is in constant pain especially with motion. He states that he had five fractures of his right ankle with surgical repair. He also had fracture of the right patella, femur and wrist. There were multiple open reduction surgeries. He also had a tendon rupture in his right hand. He has low back syndrome with degenerative joint disease especially at L5.

\* \* \*

Surgical scars as noted. Musculoskeletal exam reveals that he elicits pain both on flexion and hyperextension almost immediately within 10 degrees. Lateral rotation also produces significant pain bilaterally. Limited neurological exam is normal but he cannot ambulate without significant pain.

His equilibrium is in error because of his fractures. Heel to toe exam was impossible. He staggers considerably on tandem walking.

I obtained a routine XCR and films of his lumbar spine indicate degenerative disc disease both lower thoracic mid and lower lumbar spine. X-rays of his right femur demonstrate an intramedullary rod. We are awaiting reports from the radiologist on the XCR as well as films of his right ankle and wrist.

\* \* \*

**A:** Chronic pain from prior extensive injuries. He is unable to work at his usual occupation.

(Exs. 6.4 – 6.5)

5. The April 13, 2010 X-Rays show the following:
  - a. The right wrist shows no “evidence of hardware complication or failure.” (Ex. 6.6)
  - b. The Claimant has a screw in his right ankle (“medial malleolar fixation screw”). (Ex. 6.7)
  - c. The Claimant has a rod in the right femur that “[stabilizes] a well healed fracture of the mid shaft of the femur. The rod is bent in the intertrochanteric region.” (Ex. 6.9) There is “heterotopic bone formation . . . along the superior aspect of the greater trochanter.”<sup>1</sup>
  - d. The Claimant has “degenerative disk disease in the lower thoracic and mid and lower lumbar spine.” (Ex. 6.10)
  
6. Dr. █████ completed a Preliminary Examination for Interim Assistance Form (AD #2) on the Claimant’s behalf on April 13, 2010. (Exs. 6.2 – 6.3) He diagnosed the Claimant with multiple fractures, degenerative joint disease, and chronic pain. (Ex. 6.3) He stated the Claimant was not expected to recover and concluded that the Claimant was “[u]nable to perform usual occupational tasks - totally disabled. “*Id.*
  
7. The Claimant testified about his conditions and how they affected him:
  - a. He experiences constant pain
  - b. He cannot sit for long periods of time. After sitting during the hearing for approximately 25 minutes, he was in a great deal of pain and needed to stand.
  - c. He does not walk right anymore. He has screws in his ankle from it being broken 5 times. One leg is shorter than another. He does not use a cane or crutches to walk, but can only walk a couple blocks.
  - d. He can only stand until his ankle begins to hurt.
  - e. It is difficult for him to bend. If he tries to squat down, he cannot because his ankle does not bend and he will fall over.
  - f. He sometimes uses the motorized grocery carts to go grocery shopping.
  - g. While he can dress himself, it is difficult for him to even put a sock on.
  - h. He believes he can lift up to 50 pounds but is not sure.

---

<sup>1</sup> Heterotopic is defined as “occurring at an abnormal place or upon the wrong part of the body.” *Dorland’s Illustrated Medical Dictionary* 763 (27<sup>th</sup> Edition 1988).

i. He cannot drive for very long because it causes back and leg pain.

8. [REDACTED] is an Eligibility Technician employed by the Division. (Ex. 6.0) He is not a medical professional. ([REDACTED] testimony) He reviewed the Claimant's application for Interim Assistance and denied the application on the basis that the Claimant "does not substantiate inability to perform any job in national job market." (Ex. 6.1)

### **PRINCIPLES OF LAW**

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). "Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the [triers of fact] that the asserted facts are probably true." *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003).

Interim Assistance is a benefit provided by the state to Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve their Supplemental Security Income application. 7 AAC 40.170(a) and (b); AS 47.25.255.

In order to qualify for Interim Assistance, the applicant must satisfy the Social Security Supplemental Security Income disability requirements as set forth in the Social Security regulations. 7 AAC 40.180(b)(1). The Social Security regulations set out a very specific multistep process that must be followed in order to determine whether someone is disabled:

1. Is the applicant performing substantial gainful employment as defined by the applicable Social Security regulations? If so, the applicant is not disabled. 20 CFR 416.920(a)(4)(i). If the applicant is not performing substantial gainful employment, then the applicant must satisfy the next question.

2. Is the applicant's impairment severe? A severe impairment is one that "significantly limits [a person's] physical or mental ability to do basic work activities." 20 CFR 416.920(c). Medical evidence is required to establish an applicant's impairment. 20 CFR 416.908. If an applicant has multiple impairments, the combined effect of all the impairments must be considered in determining whether an applicant is severely impaired. 20 CFR 416.923. 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 the applicant must satisfy the next question.

3. Has the applicant's severe impairment lasted for a continuous period of at least 12 months, or can it be expected to last for a continuous period of at least twelve 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). If the severe impairment satisfies this duration requirement, the applicant must satisfy the next question.

4. Does the applicant's severe impairment meet or medically equal the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1? If it does, the applicant is 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 the applicant must satisfy the next question.

5. Does the applicant's severe impairment prevent him from doing his previous relevant work? This involves an evaluation of the applicant's residual functional capacity. If the applicant is not prevented from performing his previous relevant work, the applicant is not disabled. 20 CFR 416.920(a)(4)(iv). Otherwise, the applicant must satisfy the next question.

6. Is the applicant capable of performing other work? Answering this question requires the application of the Social Security medical vocational guidelines that include the evaluation of the applicant's residual functional capacity, age, education, English literacy, and previous work experience. If the applicant is not capable of performing other work, he is disabled. 20 CFR 416.920(a)(4)(v).

In determining whether a person can perform other work, the Social Security regulations define the characteristics of different levels of work:

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities.

20 CFR 416.967(b).

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.

20 CFR 416.967(a).

The Social Security medical vocational guidelines for a 47 year old applicant who is limited to sedentary work, who has a high school diploma or a GED, with primarily skilled or semiskilled work experience – where those skills are not transferrable, normally direct a conclusion that the applicant is not disabled. 20 CFR Pt. 404, Subpt. P, App. 2, § 201.21. However, if such a person is not able “to perform a full range of sedentary work” they may be found disabled. 20 CFR Pt. 404, Subpt. P., App. 2, § 201.00(h)(3). Additionally, the medical vocation guidelines, located at 20 CFR Pt. 404, Subpt. P, App. 2, are not strictly applied when an applicant has both exertional and non-exertional limitations that limit his ability to work. 20 CFR 416.969a(d).

Exertional limitations are “limitations and restrictions imposed by [an applicant’s] impairment(s) and related symptoms, such as pain, [that] affect only . . . the ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling).” 7 CFR 416.969a(b).

Non-exertional limitations are those that are not strength demanding, such as difficulty functioning due to anxiety and depression, or difficulty concentrating, understanding, remembering, seeing, or hearing, or difficulty “reaching, handling, stooping, climbing, crawling, or crouching.” 7 CFR 416.969a(c). Pain is also 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).

### ANALYSIS

It is necessary to review the evidence in this case and decide, using the multistep Social Security disability analysis, if the Claimant’s impairments satisfy the Social Security disability criteria. If they do, the Claimant is disabled by Social Security standards and eligible for Interim Assistance benefits. If they do not, the Claimant is not disabled by Social Security standards and not eligible for Interim Assistance benefits. Because this case involves an application for benefits, the Claimant has the burden of proof by a preponderance of the evidence.

The Preliminary Examination form completed by Dr. [REDACTED] diagnosed the Claimant with multiple fractures, degenerative joint disease, and chronic pain. The medical documents in the record corroborate these diagnoses. *See* Findings of Fact 3 – 5 above.

#### A. Current Employment.

The last time the Claimant worked was five years ago, i.e. he is currently unemployed. *See* Finding of Fact 2 above. He therefore satisfies the first step of the Social Security disability analysis. It is therefore necessary to proceed to the next step, and determine if he is severely impaired.

#### B. Severe Impairment.

The Division argued the Claimant was not severely impaired. A review of the medical evidence in this case demonstrates that the Claimant has long-term injuries (back degenerative disc disease/degenerative joint disease and multiple fractures) that cause him chronic pain, which he is not expected to recover from, which affect his ability to walk, bend and turn (flexion, hyperextension, lateral rotation). *See* Findings of Fact 3 - 5 above. These are physical impairments that “significantly limit[s] [his] physical . . . ability to do basic work activities.” 20 CFR 416.920(c). The Claimant therefore satisfies the regulatory requirement that he experiences a severe physical impairment.

Because the Claimant has a severe physical impairment, it is necessary to proceed to the next step of the Social Security disability analysis and determine if his severe physical impairment has lasted or can be expected to last for a continuous period of a least 12 months.

C. Duration.

The medical evidence in the record shows that the Claimant has screws in his right wrist, right ankle, and a rod in his right leg (femur). The medical evidence only shows when the Claimant had the screws placed in his right wrist, which was in late 2006. However, given the Claimant's history that he had a motorcycle accident 5 years ago, it is a reasonable inference that these other injuries date back to the same accident. In other words, they have lasted for longer than one year. In addition, Dr. [REDACTED] stated that the Claimant was not expected to recover from his injuries, i.e. they will persist for over one year. The Claimant's impairments have therefore lasted for longer than 12 months and can be expected to last for over 12 months. They meet the durational requirement.

Because the Claimant's severe physical impairment has lasted for a period of longer than 12 continuous months and can be expected to persist for longer than 12 months, it is necessary to proceed to the next step of the Social Security disability analysis and determine if his severe physical impairment meets or medically equals the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1.

D. Meeting or Equaling the Social Security Impairment Listings.

The Claimant's severe physical impairment consists of his medically documented degenerative disc disease, his fractures, and his chronic pain arising from these injuries. The Social Security system classifies these conditions under the musculoskeletal category. In order for the Claimant to meet or medically equal the criteria set out in the musculoskeletal listing, he must have "an extreme limitation of the ability to walk" or "an extreme loss of function of both upper extremities." 20 CFR Pt 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1) and 1.00(B)(2)(c).

An "extreme limitation of the ability to walk" includes the "inability to walk without the use of a walker, two crutches, or two canes" and "the inability to carry out routine ambulatory activities, such as shopping and banking." 20 CFR Subpt. P, App.1, § 1.00(B)(2)(b).

None of the evidence presented shows any limitations with regard to the Claimant's arms, shoulders, or hands. The evidence, however, does show that the Claimant has medical conditions that impair his ability to walk. Dr. [REDACTED] found that the Claimant had pain on walking, poor equilibrium, could not walk heel to toe, and "stagger[ed] considerably on tandem walking." *See* Finding of Fact 4 above.

The Claimant testified at hearing that he could only walk a couple of blocks and that he did not use a cane or crutches. Based upon the Claimant's testimony and the medical evidence, the Claimant has not shown that the Claimant has "an extreme limitation of the ability to walk." As a result, he does not meet or medically equal the Social Security listing of impairments for the musculoskeletal category. It is therefore necessary to proceed to the next step of the Social Security disability analysis and determine if he can perform his previous relevant work.

E. Previous Relevant Work.

The Claimant's previous work experience was operating heavy equipment doing underground construction and excavating ditches. The Claimant's testimony that driving causes him back and leg pain demonstrates his inability to operate heavy equipment. It is corroborated by the medical evidence showing chronic pain and limited range of motion (flexion, hyperextension, and lateral rotation limitations). In addition, Dr. [REDACTED], the examining physician, explicitly found the Claimant could not "work at his usual occupation." *See* Finding of Fact 4 above.

Because the Claimant cannot perform his previous relevant work, it is necessary to proceed to the next step in the Social Security disability analysis and determine whether he is capable of performing other work.

F. Performing Other Work.

It is next necessary to determine if the Claimant can perform other work. While the Claimant testified he thought he could lift up to 50 pounds, the medical evidence shows that he is not capable of the physical requirements associated with light work: frequent walking, standing, and prolonged sitting. *See* 20 CFR 416.967(b). It is therefore necessary to determine if the Claimant can perform sedentary work. Sedentary work has less physical demands and involves mainly sitting, occasionally lifting or carrying articles like docket files, ledgers, and small tools, with occasional walking and standing, and lifting up to 10 pounds. *See* 20 CFR 416.967(a). This is clerical and office work.

The Claimant's testimony regarding his physical limitations (pain, inability to sit for periods of time, some limitations on walking and standing, and bending) is supported by the medical evidence, which demonstrates that the Claimant has chronic pain, a limited range of motion and difficulty walking. *See* Findings of Fact 4, 6, and 7 above. These limitations demonstrate that the Claimant is limited in his ability to sit for long periods of time, bend, stoop, walk and stand.

The medical vocational guidelines for a 47 year old applicant who is limited to sedentary work, who has a high school diploma or a GED, with primarily skilled or semiskilled work experience – where those skills are not transferrable, normally direct a conclusion that the applicant is not disabled. 20 CFR Pt. 404, Subpt. P, App. 2, § 201.21. However, if a person is not able "to perform a full range of sedentary work" they may be found disabled. 20 CFR Pt. 404, Subpt. P., App. 2, § 201.00(h)(3). Additionally, the medical vocation guidelines, located at 20 CFR Pt. 404, Subpt. P, App. 2, are not strictly applied when an applicant has both exertional and non-exertional limitations that limit his ability to work. 20 CFR 416.969a(d).

The Claimant has a combination of exertional and non-exertional limitations. The exertional limitations consist of his limitations on sitting, standing, walking, and his chronic/disabling pain. The non-exertional limitations consist of his chronic pain and his limited range of motion, i.e. his ability to bend, turn, and stoop. These exertional and non-exertional limitations affect his ability to complete a full range of sedentary work. Under these circumstances, it is not necessary to strictly follow the medical vocational guidelines.



Because the Claimant experiences chronic pain from his medically documented degenerative disc disease and various fractures which limit his ability to sit, stand, and walk, and he has a limited range of motion, which limits his ability to bend, turn, and stoop, he is not capable of performing a full range of sedentary work. He therefore satisfies the last step in the Social Security disability analysis, and is disabled.

The Claimant has met his burden of proof by a preponderance of the evidence. He has established that he is disabled according to Social Security criteria. The Division was therefore not correct when it denied his March 10, 2010 application for Interim Assistance benefits on July 16, 2010.

### **CONCLUSIONS OF LAW**

1. The Claimant is not currently employed and has not been employed for a number of years. He therefore is not performing substantial gainful activity.
2. The Claimant experiences medically documented severe physical impairments, consisting of back conditions, chronic pain, and fractures, which have lasted or can be expected to last for 12 months or longer, that qualify him as severely impaired according to the Social Security disability regulations.
3. The Claimant's severe physical impairments do not meet or medically equal the Social Security listings of impairments.
4. The Claimant is not capable of performing his previous relevant work, operating construction heavy equipment.
5. The Claimant has a combination of exertional and non-exertional limitations that limit his ability to perform a full range of sedentary work. Given those limitations, he has met his burden of proof and established that he is disabled according to Social Security criteria.
6. The Division was therefore not correct when it denied the Claimant's March 10, 2010 application for Interim Assistance benefits on July 16, 2010.

### **DECISION**

The Division was not correct when it denied the Claimant's March 10, 2010 application for Interim Assistance benefits on July 16, 2010.

### **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

