

completed the Division's Form AD-2.⁷ Dr. C wrote that Ms. G had reactive arthritis with severe polyarthropathy⁸ which was limiting her ability to perform her own instrumental activities of daily living.⁹ Dr. C stated that Ms. G's reactive arthritis was expected to resolve within five months, but that there was "no way to know when [it] would resolve fully."¹⁰

According to D A, M.D., a physician whose clinic has treated Ms. G since September 2012, Ms. G's reactive arthritis is causing her debilitating pain.¹¹ As of February 17, 2012, Ms. G's reactive arthritis had begun to respond to medication, but Ms. G was still in pain and had a decreased range of motion and weakness in her joints.¹² At that time, Dr. A wrote that, although Ms. G's condition was being treated aggressively, it was unclear how long the condition would last.¹³

The medical records provided by Ms. G and obtained by the Division indicate that Ms. G was first diagnosed with reactive arthritis on September 8, 2012,¹⁴ and that she continued to be treated for it through February 17, 2013.¹⁵

Ms. G testified that her reactive arthritis causes severe pain in, and makes her unable to flex the joints of, her fingers, hands, feet, and knees.¹⁶ Her prior work was as a sous chef and cook, but she is no longer able to perform this work due to her reactive arthritis.¹⁷ She believes that her reactive arthritis has rendered her unable to work since August 2012.¹⁸ In addition to her primary diagnosis of reactive arthritis, Ms. G also has secondary diagnoses including pancreatitis and knee surgeries in 1996, 1998, and 1999.¹⁹

⁷ Exs. 3.6, 3.7.

⁸ Polyarthropathy, also known as polyarthritis, is a nonspecific term for arthritis involving two or more joints, typically associated with auto-immune forms of arthritis. Gale Encyclopedia of Medicine (Gale Group 2008), accessed online at <http://medical-dictionary.thefreedictionary.com/polyarthritis> (date accessed February 25, 2013). Symptoms usually include pain, inflammation, and/or swelling in multiple joints. *Id.*

⁹ Ex. 3.7. Instrumental activities of daily living (IADLs) are defined by regulation as light meal preparation, main meal preparation, light housekeeping, laundry (in-home), laundry (out-of-home), and shopping. *See* 7 AAC 125.030.

¹⁰ Ex. 3.7.

¹¹ Ex. A.

¹² Ex. A.

¹³ Ex. A.

¹⁴ Ex. 3.58.

¹⁵ Exs. 3.58 - 3.151, Ex. A.

¹⁶ Ex. 3.8, C B G hearing testimony.

¹⁷ Exs. 3.8 - 3.11.

¹⁸ Ex. 3.8.

¹⁹ Ex. 3.147.

B. Relevant Procedural History

Ms. G applied for Interim Assistance on September 28, 2012.²⁰ On January 2, 2013 the Division denied Ms. G's application because her medical condition did not appear to satisfy the Social Security Administration's (SSA's) disability program criteria.²¹ The Division's notice further stated that, because it did not appear likely that Ms. G would be found disabled by SSA, she was not eligible for Interim Assistance.²²

Ms. G requested a hearing on January 15, 2013.²³ The hearing was held on February 21, 2013. Ms. G attended the hearing in person, represented herself, and testified on her own behalf. Public Assistance Analyst Jeff Miller participated by phone and represented the Division. Jamie Lang, a disability adjudicator with the Alaska Department of Labor, participated by phone and testified on behalf of the Division. The record closed at the end of the hearing.

III. Discussion

A. The Three Step Interim Assistance Disability Determination Process

The Alaska Public Assistance program provides financial assistance to "aged, blind, or disabled needy [Alaska] resident[s]."²⁴ Applicants who are under the age of 65 years are required to apply to the Social Security Administration and qualify for Supplemental Security Income (SSI) as a prerequisite to receiving Adult Public Assistance benefits.²⁵ Once an applicant is approved for SSI, he or she is then eligible to receive Adult Public Assistance benefits.²⁶

Interim Assistance is a monthly payment in the amount of \$280 provided to Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve their Supplemental Security Income applications.²⁷ In order to qualify for Interim Assistance, the applicant must be "likely to be found disabled by the Social Security Administration."²⁸ An Interim Assistance applicant has the burden of proving, by a preponderance of the evidence, that he or she is likely to be found disabled by the SSA.²⁹

²⁰ Ex. 2.

²¹ Exs. 4, 5.

²² Exs. 4, 5.

²³ Ex. 5.1.

²⁴ AS 47.25.430.

²⁵ 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the Supplemental Security Income standards are not required to apply for Supplemental Security Income benefits. 7 AAC 40.170(a).

²⁶ 7 AAC 40.030(a); 7 AAC 40.170(a).

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

²⁸ 7 AAC 40.180(b)(1).

²⁹ See 2 AAC 64.290(e); see also *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985) (the party who is seeking a change in the status quo bears the burden of proof); *Amerada Hess Pipeline v. Alaska*

The SSA uses a five-step evaluation process in making its disability determinations.³⁰ Each step is considered in order, and if the SSA finds the applicant not to be disabled at steps one, two, or four, it does not consider subsequent steps.³¹

The Division uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.³² The first step looks at the applicant's current work activity. If the applicant is performing "substantial gainful activity," the applicant is not disabled.³³ 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.³⁴ In order to be considered disabled, the impairment or combination of impairments must be severe,³⁵ and must be expected to result in death or must have lasted or be expected to last at least 12 months.³⁶ 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 requirement, then it is necessary to proceed to step three.

The third step requires the evaluation of whether the impairment satisfies certain impairment-specific criteria (known as "Listings") adopted by the SSA.³⁷ If it does, the applicant is disabled³⁸ 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.³⁹

B. Application of the Interim Assistance Criteria to This Case

The Division agrees that Ms. G is not currently engaged in substantial gainful activity.⁴⁰ This means she satisfies step one of the three-step Interim Assistance disability analysis. The

Public Utilities Comm'n, 711 P.2d 1170, 1179 n. 14 (Alaska 1986) (the standard of proof in an administrative proceeding, unless otherwise specified, is the preponderance of the evidence standard).

³⁰ 20 C.F.R. § 416.920.

³¹ 20 C.F.R. § 416.920(a)(4).

³² See *In re M.H.*, OAH No. 12-0688-APA (Commissioner of Health and Social Services 2012).

³³ 20 C.F.R. § 416.920(a)(4)(i).

³⁴ 20 C.F.R. § 416.908.

³⁵ 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).

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

³⁷ See 20 C.F.R. Pt. 404, Subpart P, Appendix 1 (hereafter "Appendix 1").

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

³⁹ See *In Re M.H.*, OAH Case No. 12-0688-APA.

⁴⁰ Ex. 3.2; Jamie Lang hearing testimony.

Division also agrees that Ms. G's reactive arthritis constitutes a severe impairment.⁴¹ The Division asserts, however, that Ms. G does not satisfy the 12 month durational requirement.⁴²

In order to satisfy the "step 2" durational requirement, unless an impairment is expected to result in death, the impairment must have lasted, or must be expected to last, for a continuous period of at least 12 months.⁴³ In this case, Ms. G's medical records indicate that she was first diagnosed with reactive arthritis on September 8, 2012.⁴⁴ As of October 5, 2012 Ms. G's reactive arthritis was expected to resolve within five months,⁴⁵ or by early March 2013. Thus, at present, the period from onset to expected resolution of Ms. G's reactive arthritis is six months.

It is certainly possible that Ms. G's reactive arthritis will continue for another six months or more (i.e. until September 2013 or later). In that event, her reactive arthritis would then satisfy the 12 month durational requirement.⁴⁶ However, as of this date, it does not. Accordingly, the Division was correct to deny Ms. G's application for Interim Assistance because her reactive arthritis does not yet satisfy the 12 month durational requirement.⁴⁷

IV. Conclusion

Ms. G has the burden of proving that she is likely to be found disabled by SSA. The preponderance of the evidence shows that Ms. G does not yet satisfy step two of the SSA disability determination process (i.e. her reactive arthritis does not currently satisfy the 12 month durational requirement). As a result, the Division's decision denying Ms. G's application for Interim Assistance is affirmed.

DATED this 26th day of February, 2013.

Signed

Jay D. Durych
Administrative Law Judge

⁴¹ Ex. 3.2; Jamie Lang hearing testimony.

⁴² Ex. 3.2; Jamie Lang hearing testimony.

⁴³ 20 C.F.R. § 416.909.

⁴⁴ Ex. 3.58.

⁴⁵ Ex. 3.7.

⁴⁶ Ms. G may reapply for Interim Assistance at any time.

⁴⁷ Because Ms. G has not met the 12 month durational requirement, it is not necessary to determine whether her impairment satisfies the criteria of one of the Social Security Administration's impairment "Listings."

Adoption

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

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

DATED this 12th day of March, 2013.

By: Signed _____
Name: Jay D. Durych
Title: Administrative Law Judge

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