

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. 11-FH-139
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Interim Assistance benefits on January 6, 2011. (Ex. 1) On March 25, 2011, the Division sent the Claimant notice his Interim Assistance application was denied. (Ex. 3) The Claimant requested a Fair Hearing on March 29, 2011. (Ex. 4)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing began on May 10, 2011. The hearing was continued several times at the Claimant's request. It was then dismissed, due to the Claimant's failure to attend the August 29, 2011 hearing. The Claimant requested the hearing be reinstated, which it was. The hearing was then rescheduled for and completed on October 25, 2011.

The Claimant appeared in person for his hearing. He represented himself and testified on his own behalf. [REDACTED], Public Assistance Analyst with the Division, appeared in person; he represented the Division and testified on its behalf.

ISSUE

Was the Division correct when it denied the Claimant's January 6, 2011 Interim Assistance application?

SUMMARY OF DECISION

The Claimant is severely physically impaired due to his gouty arthritis (gout). He is not severely impaired by his other health conditions, to wit, hypertension, Hepatitis C, Chronic Obstructive Pulmonary Disease, and depression/Bipolar Disorder. His severe physical impairment does not meet or equal the Social Security disability listings. He, however, is not able to perform his physically demanding previous relevant work. Regardless, he is capable of performing work at the sedentary

level. As a result, the Claimant does not satisfy the Interim Assistance program's eligibility requirement, set forth in 7 AAC 40.180(b)(1), that he is "likely to be found disabled by the Social Security Administration." The Division was therefore correct when it denied the Claimant's January 6, 2011 Interim Assistance application.

FINDINGS OF FACT

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

1. The Claimant is currently 45 years old (birth date [REDACTED]). (Ex. 1) He is literate in the English language and has a high school diploma. (Ex. 2.10)
2. The Claimant's primary work experience is physical unskilled work. (Ex. 2.8; Claimant testimony) He has worked as a personal care attendant, a laborer, and a dishwasher. *Id.* The last time he worked consistently was in the summer of 2010. *Id.* In addition, he worked for several days in April 2011 as a day laborer pulling insulation out of a home. (Claimant testimony) He had to stop that job because he experienced trouble breathing. *Id.*
3. Dr. [REDACTED], M.D., completed a Preliminary Examination for Interim Assistance Form (AD #2) on the Claimant's behalf on February 17, 2011. (Exs. 2.4 – 2.5) On that form, Dr. [REDACTED] stated the Claimant had diagnoses of hypertension, depression, gouty arthritis, Hepatitis C, and Chronic Obstructive Pulmonary Disease. (Ex. 2.5) Dr. [REDACTED] further stated the Claimant was not expected to recover from those conditions. *Id.*
4. Dr. [REDACTED]'s examination notes dated February 17, 2011 indicate the Claimant's blood pressure is controlled, and that his feet had some tenderness, but "no signification redness or warmth." (Exs. 2.25, 2.26)
5. The Claimant was examined on March 25, 2011 by Dr. [REDACTED]. (Ex. 19.24 – 19.27) Dr. [REDACTED]'s March 25, 2011 examination notes indicate that the Claimant's gout has improved since being treated with allupurinol, that his Bipolar Disorder was being treated, and that his Hepatitis C was stable. (Ex. 19.26) The notes also show that the Claimant's mood was slightly anxious and that his speech was slightly pressured.
6. The Claimant was examined on March 30, 2011 by [REDACTED], ANP. (Ex. 19.22) Her notes indicate that she was following up on his Bipolar Disorder. She found that his speech was mildly pressured and that he had no suicidal ideation. (Exs. 19.22 – 19.23)
7. The Claimant was examined on April 13, 2011 by Dr. [REDACTED]. (Ex. 19.18 – 19.21) Dr. [REDACTED]'s April 13, 2011 examination notes indicate the Claimant's gout had improved with no flare ups, that his mood was "quite a bite more stable," and that his tests for Chronic Obstructive Pulmonary Disease showed that he had mild obstructive changes, but that he was not symptomatic. (Ex. 19.21)
8. The Claimant made a clinic visit on April 27, 2011. (Ex. 19.15) The registered nurse's notes state as follows:

Pt noted to have steady gait with out deficit noted. Pt did not appear to have difficulty standing from a sitting position nor sitting down in a chair. During conversation, patient moving about in chair and turning torso in a side to side motion without complaints of pain. Pt bent over at the waist to pick up paper on floor and did not appear to have difficulty with movement.

(Ex. 19.15)

9. The only indication in the voluminous medical documents in the record (Exs. 2, pp. 1 – 643; 19, pp. 1 – 84) that the Claimant experiences any current medically noted limitations on the Claimant's ability to walk, stand, sit, or lift over a specified weight range is contained in Dr ██████'s March 25, 2011 notes that the Claimant had a physical therapy evaluation where he was found capable of light duty work. (Ex. 19.25) The medical records do not contain any indication that the Claimant's hypertension, Hepatitis C, or his Chronic Obstructive Pulmonary Disease are currently actively symptomatic. Nor do they contain any information regarding how the Claimant's diagnosis of depression, provided on the February 17, 2011 Preliminary Examination for Interim Assistance Form (AD #2), currently affects or limits the Claimant's functioning in any manner. *Id.* There is a subsequent diagnosis of Bipolar Disorder, as noted above, that shows some pressured speech and anxiety.

10. The Claimant was hospitalized overnight on January 17, 2011, while intoxicated, for suicidal ideation. (Ex. 2.94 – 2.95)

11. The Claimant testified as follows:

- a. He is depressed and cannot seem to snap out of it.
- b. He does not have problems functioning in public, but does experience anxiety.
- c. He is being treated for his gout, which is working. However, he has occasional flare ups.
- d. He can walk for 50 yards, but has to stop and rest.
- e. He can lift 25 pounds on a regular basis.
- f. He has trouble bending from his lower back.
- g. He can sit for approximately 45 minutes, but then has to get up and move around.
- h. He can stand for approximately an hour at a time, but then has to sit down.
- i. He thinks he does not have any active Hepatitis C symptoms.

- j. His Chronic Obstructive Pulmonary Disease affects his mobility. However, he can keep it under control so he is not gasping for breath.

12. The Division sent the Claimant notice his Interim Assistance application was denied on March 25, 2011. (Ex. 3) The Division's medical reviewer's notes¹ state as follows:

- a. The Claimant's hypertension does not satisfy Social Security disability criteria. The blood pressure is controlled and there is no evidence of cardiac enlargement, no evidence of ischemia, or cyanosis. (Ex. 2.2)
- b. The Claimant's Hepatitis C does not satisfy Social Security disability criteria. There is no evidence of ascites, bleeding varices, encephalopathy, or end stage liver disease. (Ex. 2.2)
- c. The Claimant's gout does not result in an impairment to his mobility requiring use of a walker, two canes, or crutches. (Ex. 2.2)
- d. The Claimant's mental illness does not affect his ability to conduct his activities of daily living, and his concentration, persistence, and pace are intact. (Ex. 2.2)
- e. The Claimant's Chronic Obstructive Pulmonary Disease is not sufficiently symptomatic and his medications (Advair and Albuterol) are helping the Claimant control the disease. (Ex. 2.2)

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcoholic 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).

II. Interim Assistance Program Requirements

The Alaska Public Assistance program provides financial assistance to "aged, blind, or disabled needy [Alaska] resident[s]." AS 47.25.430. Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income benefits. 7 AAC 40.170(a).² Once an

¹ The Division's medical reviewer did not testify.

² 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).

applicant is approved for federal Supplemental Security Benefits, s/he is then eligible to receive Adult Public Assistance benefits. 7 AAC 40.030(a); 7 AAC 40.170(a).

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 Social Security Administration to approve their Supplemental Security Income application. 7 AAC 40.170(a) and (b); AS 47.25.455. In return for the State paying Adult Public Assistance applicants Interim Assistance pending Social Security Administration approval, the applicants agree, if and when the Social Security Administration approves them for Supplemental Security Income, to reimburse the State for the Interim Assistance payments they have received from the State. 7 AAC 40.375(c) and (d); AS 47.25.455(c). The source for the repayment is the Claimant's first Supplemental Security Income payment, which the applicants are required to assign to the State. 7 AAC 40.375(c).

The Social Security Administration, in turn, before it agrees to assign an applicant's first Supplemental Security Income payment over to the State for reimbursement of Interim Assistance payments, requires that the State enter into an agreement with the Social Security Administration. 20 C.F.R. § 416.1901; 20 C.F.R. § 416.1910. The applicable Social Security regulations that control the reimbursement to the State of Interim Assistance payments specifically define "Interim Assistance" as "assistance the State gives you . . . beginning with the first month for which you are eligible for [Supplemental Security Income] benefits." 20 C.F.R. § 415.1902.

The Alaska *Adult Public Assistance Manual* states that "[t]he [Adult Public Assistance] program uses the same definitions of disability and blindness as [Supplemental Security Income]." *Adult Public Assistance Manual* Section 426-2C.

Alaska Adult Public Assistance regulation 7 AAC 40.030(a) reads:

An applicant must meet the eligibility requirements of the [Supplemental Security Income] program contained in Title XVI of the Social Security Act . . . and in 20 C.F.R. Part 416, and the eligibility requirements set forth in this chapter. If the requirements of this chapter conflict with requirements of the [Supplemental Security Income] program, the requirements of this chapter apply unless the requirements of the [Supplemental Security Income] program specifically supersede inconsistent state program requirements.

In order to qualify for Interim Assistance, the applicant must be "likely to be found disabled by the Social Security Administration." 7 AAC 40.180(b)(1). Pursuant to 7 AAC 40.180(b), the Division is to determine the likelihood of whether the applicant would "be found disabled by the Social Security Administration." The Interim Assistance regulation, 7 AAC 40.180, contains a number of specific elements, which an applicant must satisfy in order to establish Interim Assistance eligibility.³ These

³ **7 AAC 40.180. Initial determination of disability.** (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.

elements are not one hundred percent identical to the elements that a federal Supplemental Security Income applicant must satisfy. *See* 20 C.F.R. § 416.920. However, the following factors demonstrate that the Division is required to adhere to the federal Supplemental Security Income eligibility requirements contained in 20 C.F.R. § 416:

1. The Division, as part of its entering into an Interim Assistance reimbursement agreement with the Social Security Administration, agreed to provide Interim Assistance payments to persons who are “eligible” for Supplemental Security Income as defined by the Social Security Administration. *See* 20 C.F.R. § Sections 416.1901, 1902, and 1910.
2. Alaska regulation 7 AAC 40.180(b)(1) reads that an applicant must be “likely to be found disabled by the Social Security Administration.”

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- (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
 - (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 the
- (1) the applicant's condition is listed as an impairment category described in (b)(1)(B) of this section;
 - (2) medical information obtained under (b) of this section documents the applicant's impairment;
 - (3) 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.

3. Alaska regulation 7 AAC 40.030(a) reads that Adult Public Assistance (and hence Interim Assistance) applicants “must meet the eligibility requirements of the [Supplemental Security Income] program contained in Title XVI of the Social Security Act . . . and in 20 C.F.R. Part 416.”
4. The Division interprets the Interim Assistance regulations as requiring it to follow Supplemental Security Income eligibility rules as evidenced by the Alaska *Adult Public Assistance Manual* statement that “[t]he [Adult Public Assistance] program uses the same definitions of disability and blindness as [Supplemental Security Income].” *Adult Public Assistance Manual* Section 426-2C.

The Social Security disability determination process for Supplemental Security Income eligibility involves a step-by-step “sequential evaluation process,” which is described in 20 C.F.R. § 416.920:

1. Is the applicant performing substantial gainful employment as defined by the applicable Social Security regulations? If so, the applicant is not disabled. 20 C.F.R. § 416.920(a)(4)(i). If the applicant is not performing substantial gainful employment, then the applicant must satisfy the next question.
- 2(a). 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 C.F.R. § 416.920(c). 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. 20 C.F.R. § 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 C.F.R. § 416.923. If the impairment is not severe, the applicant is not disabled. 20 C.F.R. § 416.920(a)(4)(ii). If an applicant is severely impaired, then the applicant must satisfy the next question.
- 2(b). 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 C.F.R. § 416.909. If the severe impairment does not satisfy this duration requirement, the applicant is not disabled. 20 C.F.R. § 416.920(a)(4)(ii). If the severe impairment satisfies this duration requirement, the applicant must satisfy the next question.
3. Does the applicant’s severe impairment meet or medically equal the listing of impairments contained in the Social Security regulations located at 20 C.F.R. Pt. 404, Subpt. P, App. 1? If it does, the applicant is disabled and no further inquiry is required. 20 C.F.R. § 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.
4. 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 C.F.R. § 416.920(a)(4)(iv). Otherwise, the applicant must satisfy the next question.

5. 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 C.F.R. § 416.920(a)(4)(v).

In determining whether a person can perform other work, the Social Security regulations classify work into five different levels: sedentary, light, medium, heavy, and very heavy. 20 C.F.R. § 416.967. Sedentary work is the least physically demanding classification:

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 C.F.R. § 416.967(a).

The medical vocational guidelines, which are part of the process for determining whether a person can perform other work, are contained in 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 201. The specific medical vocational guidelines for an English literate individual in the 45 - 49 age range, who is able to perform sedentary work, regardless of whether he has a high school diploma, who has a range of work experience from unskilled to skilled, regardless of whether those skills are transferable, direct a conclusion that the applicant is not disabled. 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 201.18 - 22.

However, if such a person is not able "to perform a full range of sedentary work" they may be found disabled. 20 C.F.R. Pt. 404, Subpt. P., App. 2, § 201.00(h)(3). Additionally, the medical vocational guidelines, located at 20 C.F.R. 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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

The issue in this case is whether the Division was correct when it denied the Claimant's January 6, 2011 Interim Assistance application. Because Claimant is an applicant for benefits, he is the party seeking to change the status quo. The Claimant therefore has the burden of proof by a preponderance of the evidence.

Applications for Interim Assistance are governed by 7 AAC 40.180, which requires that an applicant appear "likely to be found disabled by the Social Security Administration." 7 AAC 40.180(b)(1). This requires that an applicant have a disabling impairment according to Social Security criteria. 7 AAC 40.180(b).

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.

1. Substantial Gainful Activity.

The Claimant has not worked consistently since 2010. *See* Finding of Fact 2 above. In 2011, he only worked for several days, which occurred in April 2011. Given his limited work in 2011, the Claimant satisfies the first step of the Social Security disability analysis, i.e. that he is not engaged in substantial gainful activity. *See* 20 C.F.R. § 416.920(a)(4)(i). It is therefore necessary to proceed to the next step of the Social Security disability analysis and determine if he has a severe impairment that has lasted or can be expected to last for a period of 12 continuous months or longer. *See* 20 C.F.R. § 416.920(a)(4)(ii).

2(a). Severe Impairment.

The Claimant has medically diagnosed impairments of hypertension (high blood pressure), depression, gouty arthritis (gout), Hepatitis C, and Chronic Obstructive Pulmonary Disease. *See* Finding of Fact 3 above. The medical evidence in this case shows that his blood pressure is controlled, his gout is being treated with allupurinol and as of April 13, 2011 – he was not experiencing any flare ups, his Hepatitis C is not symptomatic, and while his Chronic Obstructive Pulmonary Disease is marked by some mild obstructive changes, he is not symptomatic. *See* Findings of Fact 5 and 7 above.

In addition, the Claimant was physically observed by a registered nurse on April 27, 2011. *See* Finding of Fact 8 above. The nurse did not observe any difficulty with gait (walking), sitting, movement, or bending. *Id.*

These facts, as recited above, would support a finding that the Claimant is not severely physically impaired. However, the medical records show that the Claimant had a physical therapy evaluation that showed he was capable of light duty work. *See* Finding of Fact 9 above. This implicitly supports a finding that the Claimant is not capable of the full range of physical work activities. He therefore meets

the definition of a severe impairment, being that his impairments “significantly limit[s] [his] physical or mental ability to do basic work activities.” 20 C.F.R. § 416.920(c). Because his hypertension is controlled, and his Hepatitis C and Chronic Obstructive Pulmonary Disease are not symptomatic, his severe physical impairment is limited to his gout.

The Claimant has also been diagnosed with both depression and Bipolar Disorder. *See* Findings of Fact 3, 5, and 9 above. The medical records show one overnight hospital admission for suicidal ideation while the Claimant was intoxicated. *See* Finding of Fact 10 above. That hospitalization occurred on January 17, 2011. *Id.* The Claimant is being treated for his Bipolar Disorder. *See* Findings of Fact 5, and 6 above. The medical records show that the Claimant experiences mildly/slightly pressured speech and slight anxiety. *See* Findings of Fact 5 and 6.

The Social Security disability process measures whether a mental impairment is severe or not by looking at four areas: (1) activities of daily living; (2) social functioning; (3) concentration, persistence, or pace, and (4) episodes of decompensation.⁴ 20 C.F.R. § 416.920a(c)(3). “If we rate the degree of your limitation in the first three functional areas as ‘none’ or ‘mild’ and ‘none’ in the fourth area, we will generally conclude that your impairment(s) is not severe, unless the evidence otherwise indicates that there is more than a minimal limitation in your ability to do basic work activities (*see* § 416.921).” 20 C.F.R. § 416.920a(d)(1).

There is no indication in the medical evidence showing if or how the Claimant’s depression/Bipolar Disorder affects or limits the Claimant’s functioning in any manner other than mildly/slightly pressured speech and slight anxiety. He has only experienced one episode of decompensation, which was linked to being intoxicated. Because there is no medical evidence showing that the Claimant’s depression/Bipolar Disorder limits his (1) activities of daily living; (2) social functioning; (3) concentration, persistence, or pace, or (4) that he has experienced episodes of decompensation not linked to intoxication, the Claimant has not established that his depression/Bipolar Disorder is a severe impairment.

The Claimant therefore has a severe physical impairment that consists of his gout. His hypertension, Hepatitis C, Chronic Obstructive Pulmonary Disease, and his depression/Bipolar Disorder are not severe impairments.

⁴Social Security regulation 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.00(C)(4) defines “episodes of decompensation” as follows:

Episodes of decompensation are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two). Episodes of decompensation may be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (e.g. hospitalizations, placement in a halfway house, or a highly structured and directing household); or other relevant information in the record about the existence, severity, and duration of the episode.

2(b). Duration

In order to satisfy the next step in the Social Security disability analysis, the Claimant's severe physical impairment, his gout, must have lasted for a continuous period of at least 12 months, or be expected to last for a continuous period of at least twelve months. 20 C.F.R. § 416.909; 20 C.F.R. § 416.920(a)(4)(ii). The February 17, 2011 Preliminary Examination for Interim Assistance Form (AD #2) states the Claimant is not expected to recover from this condition. *See* Finding of Fact 3 above. This means that his condition is expected to last beyond a twelve month period. The Claimant satisfies the duration test.

It is therefore necessary to proceed to the next step of the Social Security disability analysis and determine if the Claimant's severe physical impairment meets or medically equals the listing of impairments contained in the Social Security regulations located at 20 C.F.R. Pt. 404, Subpt. P, App. 1. *See* 20 C.F.R. § 416.920(a)(4)(iii).

3. Meeting or Equaling the Social Security Impairment Listings.

The Claimant's gout falls in 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 C.F.R. Pt 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1) and 1.00(B)(2)(c).

The most current medical evidence regarding the Claimant's mobility and use of his upper extremities consists of the Claimant's physical observation by a registered nurse on April 27, 2011. *See* Finding of Fact 8 above. The nurse did not observe any difficulty with gait (walking), sitting, movement, or bending. *Id.*

The Claimant testified that he can walk for 50 yards at a time, and that he can lift 25 pounds. *See* Finding of Fact 11(d) and (e).

An "extreme limitation of the ability to walk" is defined as "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." *See* 20 C.F.R. Pt 404, Subpart P, Appendix 1, § 1.00(B)(2)(b)(2). Despite the Claimant's testimony that his ability to walk was limited to 50 yards, the only medical evidence shows that his "gait" was normal. As a result, there is no medical evidence showing that the Claimant's ability to walk is "extremely limited."

The Claimant's testimony that he can lift 25 pounds establishes that he does not have an "extreme loss of function" of both upper extremities. *See* 20 C.F.R. Pt 404, Subpart P, Appendix 1, § 1.00(B)(2)(c).

Because there is no medical evidence establishing that the Claimant has an "extreme limitation of the ability to walk" or that he has an "extreme loss of function" of both upper extremities, he does not meet or equal the Social Security musculoskeletal disability listing as contained in 20 C.F.R. Pt 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1) and 1.00(B)(2)(c).

In summary, the Claimant's gout does not meet or equal the Social Security disability listings contained in 20 C.F.R. Pt 404, Subpart P, Appendix 1. It is therefore necessary to proceed to the next step, determining whether the Claimant can perform his previous relevant work. *See* 20 C.F.R. § 416.920(a)(4)(iv).

4. Previous Relevant Work.

The Claimant's primary work experience is physical unskilled work. *See* Finding of Fact 2 above. The type of work he performed required a great deal of standing and lifting (dishwasher, day laborer, personal care attendant). *Id.* The physical therapy evaluation showing that he is capable of light duty work, which implicitly contains physical limitations, shows that he is not fully capable of performing his previous relevant work. *See* Finding of Fact 9 above.

The Claimant therefore has met his burden of proof and established that he cannot perform his previous relevant work. It is therefore necessary to proceed to the next step in the Social Security disability analysis, whether the Claimant can perform any other work. *See* 20 C.F.R. § 416.920(a)(4)(v).

5. Performing Other Work.

The Claimant has a physical therapy evaluation showing he can perform light duty work. *See* Finding of Fact 9 above. In addition, the Claimant testified that he has trouble bending from the waist, could sit up to forty-five minutes before needing to stand, stand for up to one hour before needing to sit, and can lift up to 25 pounds. *See* Finding of Fact 11(d) - (h) above.

Sedentary work is the least physically demanding work category. It 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 C.F.R. § 416.967(a). This is clerical and office work. The medical evidence (the physical therapy evaluation) and the Claimant's testimony, as discussed above, both show that the Claimant is capable of performing sedentary work.

The medical vocational guidelines for an English literate individual in the 45 - 49 age range, who is limited to sedentary work, regardless of whether he has a high school diploma, who has a range of work experience from unskilled to skilled, regardless of whether those skills are transferable, direct a conclusion that the applicant is not disabled. 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 201.18 - 22.

The Claimant falls within the 45 - 49 year age range, is literate in English and has a high school diploma. *See* Finding of Fact 1 above. Because he is capable of sedentary work, he falls under the medical vocational rules, which mandate a conclusion that he is not disabled. *See* 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 201.18 - 22.

The Claimant has therefore failed to satisfy the Interim Assistance program's requirement that he is "likely to be found disabled by the Social Security Administration." *See* 7 AAC 40.180(b)(1). The Division was correct to deny the Claimant's January 6, 2011 Interim Assistance application.

Certificate of Service

I certify that on this 12th day of December, 2011, true and correct copies of the foregoing were sent to:
Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested
and to the following by secure e-mail:

[REDACTED], Public Assistance Analyst
[REDACTED], Public Assistance Analyst
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training
[REDACTED], Administrative Assistant II

J. Albert Levitre, Jr.
Law Office Assistant I