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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. 11-FH-184
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Interim Assistance benefits on February 25, 2011. (Ex. 1) On April 22, 2011, the Division sent the Claimant notice his Interim Assistance application was denied. (Ex. 4) The Claimant requested a Fair Hearing on May 3, 2011. (Ex. 5)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on June 14, 2011. The Claimant attended the hearing telephonically. He represented himself and testified on his own behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person; she represented the Division and testified on its behalf. [REDACTED], Health Program Manager II with the Division, attended telephonically and testified on behalf of the Division.

ISSUE

Was the Division correct when it denied the Claimant's February 25, 2011 Interim Assistance application on April 22, 2011?

SUMMARY OF DECISION

The Claimant is severely physically impaired due to his uncontrolled diabetes and diabetic neuropathy. He is unable to perform his previous relevant work. He is, however, capable of performing sedentary work. 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 February 25, 2011 Interim Assistance application.

FINDINGS OF FACT

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

1. The Claimant is currently 39 years old (birth date [REDACTED]). (Ex. 1) He has a GED and has taken classes for a Class A Commercial Driver's License. (Ex. 2.17)
2. The Claimant's most recent work experience was as a cab driver. (Ex. 2.15) He has also worked as a tow truck driver, a truck driver, a janitor, and as a laborer. *Id.* He is unemployed and has not worked for most of the previous year. (Claimant testimony)
3. Dr. [REDACTED] [REDACTED], MD, completed a Preliminary Examination for Interim Assistance Form (AD #2) on the Claimant's behalf on October 11, 2010. (Exs. 2.70 – 2.71) On that form, Dr. [REDACTED] stated the Claimant had a diagnosis of uncontrolled diabetes. (Ex. 2.71) Dr. [REDACTED] further stated the Claimant was not expected to recover from those conditions. *Id.*
4. Approximately five months later, on March 25, 2011, Dr. [REDACTED] [REDACTED], MD, completed another Preliminary Examination for Interim Assistance Form (AD #2) on the Claimant's behalf. (Exs. 2.11 – 2.12) On that form, Dr. [REDACTED] stated the Claimant's diagnoses were uncontrolled diabetes and diabetic neuropathy. (Ex. 2.12) Dr. [REDACTED] further stated the Claimant was not expected to recover from those conditions. *Id.*
5. The Claimant's medical records show the following:
 - a. The Claimant was first diagnosed with diabetes in 1998. (Ex. 2.89)
 - b. The Claimant had three lumbar surgeries (1997, 2005, 2006). (Ex. 2.89)
 - c. He showed a low level of ketones¹ on November 19, 2009. (Ex. 2.96)
 - d. On March 26, 2010, he reported occasional pain in his feet, but did not experience numbness or tingling in either his legs or his feet. (Ex. 2.89)
 - e. On August 30, 2010, he reported shooting pains in his feet and legs. (Ex. 2.85) His gait was normal, and the "sensation [was] intact and equal in all four extremities." *Id.* His urinalysis did not show any ketone levels at that time. (Ex. 2.87)
 - f. On October 11, 2010, he reported "shooting pains all over his body with tingling in his legs and feet." (Ex. 2.82) His gait was normal and both his lower extremities were "normal on inspection." *Id.* He was diagnosed with diabetic polyneuropathy and prescribed neurontin. (Ex. 2.83)

¹ Ketones are a byproduct of fat metabolism, which indicate the presence of diabetic ketoacidosis, a serious complication of diabetes. *See* Mayo Clinic website at <http://www.mayoclinic.com/health/diabetic-ketoacidosis/DS00674> (date accessed July 29, 2011).

- g. He was admitted to the Emergency Room on October 17, 2010. (Exs. 2.44 – 2.45) At that time he had “mild diabetic ketoacidosis” which was resolved. (Ex. 2.45)
- h. On December 27, 2010, he had “stabbing pains in hands, legs, feet – some improvement since starting neurontin.” (Ex. 2.28) His gait was normal, and both of his lower extremities appeared normal, although he reported numbness in his right toes. *Id.* His neurontin dosage was increased. *Id.*
- i. On January 20, 2011, his gait was normal. (Ex. 2.118) At that time, he reported pain, numbness, burning stabbing pains, and tingling in his hands, arms, feet, and legs. (Ex. 2.126) He also reported vision problems. (Exs. 2.123, 2.125) However, the physician’s assessment completed that day states that “Diabetes with ophthalmic manifestations” was “N/A” (not applicable). (Ex. 2.118)
- j. On February 25, 2011, he denied “loss and blurring of vision.” (Ex. 2.26) He reported that his fingers were going numb. *Id.* His gait was “cautious and shuffling.” *Id.* His right and left upper extremities were both “normal on inspection.” *Id.*
- k. On March 25, 2011, the Claimant reported numbness in both hands and both feet. (Ex. 2.24) His gait was normal. *Id.* His right and left upper extremities were both “normal on inspection.” *Id.* However, his “[p]alpation [was] positive for carpal tunnel testing.” *Id.*

6. The Claimant testified as follows:

- a. He has unstable blood sugars. As a result, he cannot drive cab anymore. Nor can he obtain a medical card to drive commercially anymore.
- b. Because of his ongoing pain in his feet, he can only stand for an hour.
- c. He can only sit for between 30 to 45 minutes without having to get up and move. After a minute or two, he can sit again.
- d. He can lift up to 10 lbs.
- e. His feet are almost completely numb. His hands are numb. His hand numbness makes it hard for him to perform everyday tasks, such as showering, grasping items, and manipulating buttons and zippers. The neurontin prescription helps with the pain; it does not relieve the numbness.
- f. His doctor has diagnosed the hand numbness as carpal tunnel, but thinks it may be due to diabetic neuropathy.
- g. He believes the numbness may also be related to his back injury, for which he has had three surgeries.

7. The Division agrees that the Claimant satisfies the first steps of the Social Security disability analysis (he is not working, and that he has a severe impairment that satisfies the durational requirement. (Ex. 2.001; █████ testimony) However, the Division denied the Claimant’s application on April 22, 2011 (Ex. 4) for the following reasons:

- a. The Claimant does not meet or equal the Social Security listing for diabetes. (Ex. 2.001; █████ testimony) Specifically, he does not:
 - i. experience retinitis proliferans resulting in legal blindness;
 - ii. repeated episodes of acidosis; or
 - iii. experience neuropathy to the extent required by the listings.(Ex. 2.001; █████ testimony)
- b. The Claimant is capable of performing sedentary work, and given his age, is not disabled. *Id.*

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

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 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 applicant must therefore meet the disability criteria for impairments listed in the Social Security regulations. 7 AAC 40.180(b)(1).

The Social Security disability determination process involves a step-by-step “sequential evaluation process,” which is described in 20 CFR 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 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:

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 medical vocational guidelines for a younger individual (ages 18 – 44) who is limited to sedentary work, who has a high school diploma or a GED, with work experience ranging from none to skilled – whether or not those skills are transferrable, direct a conclusion that the applicant is not disabled. 20 CFR Pt. 404, Subpt. P, App. 2, § 201.27 - 29.

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

The issue in this case is whether the Division was correct when it, on April 22, 2011, denied the Claimant’s February 25, 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.

The Division agrees that the Claimant satisfies the first steps of the Social Security disability analysis (he is not working, and that he has a severe impairment that satisfies the durational requirement). *See* Finding of Fact 4 above. It is therefore 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.

1. Meeting or Equaling the Social Security Impairment Listings.²

The Social Security disability system classifies the Claimant's diabetes (and related neuropathy) under the Endocrine System listing. 20 CFR Part 404, Subpart P, Appendix 1, § 9.08. Listing Section 9.08's requirements for a finding of disability due to diabetes or neuropathy are as follows:

- A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or
- B. Acidosis³ occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO₂ or bicarbonate levels); or
- C. Retinitis proliferans;⁴ evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

A. Neuropathy.

The Claimant has reported numbness in his hands, feet and legs. *See* Findings of Fact 5(i) through (k) and 6(e). However, the medical reports show that while there may be some carpal tunnel issues, his gait was normal on March 25, 2011, and the examination of both his upper extremities on February 25, 2011 and March 25, 2011 was normal. *See* Finding of Fact 5(j) – (k) above. The medical reports do not indicate that the Claimant is not able to hold onto or grasp items, nor that he has difficulty walking or standing. *Id.*

Because the medical reports do not indicate that the Claimant is not able to hold onto or grasp items or that he has difficulty walking or standing, the Claimant does not meet or equal the Social Security standard for disability due to diabetic neuropathy, which specifically requires that he experience

² The Claimant testified that he thought his ongoing problems with numbness might be due to his back injuries. *See* Finding of Fact 6(g) above. There is medical documentation of three back surgeries. *See* Finding of Fact 5(b) above. However, the medical records in this case do not reflect that there is an ongoing back related medical condition. Nor did the Preliminary Examination for Interim Assistance forms (form AD #2) contain any diagnoses of an ongoing back related medical condition. *See* Findings of Fact 3 and 4 above. This Decision will therefore restrict itself solely to the diagnosis contained in the Claimant's two Preliminary Examination for Interim Assistance forms, specifically diabetes and diabetic neuropathy. *Id.*

³ Acidosis, also referred to as ketoacidosis or diabetic ketoacidosis, is a serious complication of diabetes. *See* Mayo Clinic website at <http://www.mayoclinic.com/health/diabetic-ketoacidosis/DS00674> (date accessed July 29, 2011).

⁴ Retinitis proliferans is "neovascularization of the retina associated especially with diabetic retinopathy." *See* Merriam-Webster's online dictionary at <http://www.merriam-webster.com/medical/retinitis%20proliferans> (date accessed July 29, 2011).

“significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station.” 20 CFR Part 404, Subpart P, Appendix 1, § 9.08A.

B. Acidosis.

The Claimant’s medical reports, contained in the record, show only two instances where the Claimant tested positive for the presence of ketones. Those two instances were on November 19, 2009 and October 17, 2010. *See* Finding of Fact 5(c) and (g) above. This does not meet the Social Security standard for disability for diabetic acidosis, which requires that the acidosis occur “at least on the average of once every 2 months.” *See* 20 CFR Part 404, Subpart P, Appendix 1, § 9.08B.

C. Retinitis Proliferans.

Retinitis Proliferans is a vision impairment. In order to qualify for disability based upon this condition, the Claimant’s vision must be severely affected. His better eye must be correctable to 20/200 or less, or the better eye, after correction, must have 20 percent or less visual efficiency. 20 CFR Part 404, Subpart P, Appendix 1, §§ 2.02, 2.04, 9.08C.

The medical records show the Claimant reported vision problems on January 18, 2011. *See* Finding of Fact 5(i) above. However, the physician’s report of January 18, 2011 indicated “not applicable” under vision problems. *See* Finding of Fact 5(i) above. And on February 25, 2011, the Claimant denied having vision problems. *See* Finding of Fact 5(j) above. Because there is no medical evidence of vision impairment in the record, other than the one occasion reported and then later repudiated by the Claimant, the Claimant does not meet the Social Security standard for disability for retinitis proliferans. *See* 20 CFR Part 404, Subpart P, Appendix 1, § 9.08C.

In summary, the Claimant has not met his burden of proof with regard to meeting or equaling the Social Security disability listing for Diabetes, as contained in 20 CFR Part 404, Subpart P, Appendix 1, § 9.08. It is therefore necessary to proceed to the next step, determining whether the Claimant can perform his previous relevant work.

2. Previous Relevant Work.

The Claimant most recent work experience was as a cab driver. *See* Finding of Fact 2 above. He has also worked as a tow truck driver, a truck driver, a janitor, and as a laborer. *Id.* The Claimant testified he could no longer drive for a living due to his unstable blood sugar levels. *See* Finding of Fact 6(a) above.

The Claimant undisputedly has medical diagnoses of uncontrolled diabetes. *See* Findings of Fact 3 and 4. Given these diagnoses, his testimony that he can no longer drive for a living, due to his unstable blood sugar levels, is credible. Because his most recent work history is as a cab driver, and because the bulk of his work history consists of driving (cab driver, tow truck driver, truck driver), his previous relevant work consists of driving. He therefore satisfies the condition that he can no longer perform his previous relevant work. *See* 20 CFR 416.920(a)(4)(iv).

It is therefore necessary to proceed to the next step in the Social Security disability analysis, whether the Claimant can perform any other work.

3. Performing Other Work.

It is next necessary to determine if the Claimant can perform other work. *See* 20 CFR 416.920(a)(4)(v). The Claimant testified he thought he could lift up to 10 pounds. *See* Finding of Fact 6(d) above. He said he could stand for up to an hour, and that he could sit for 30 to 45 minutes, and then have to get up for a minute or two. *See* Finding of Fact 6(b) and (c) above. He additionally testified that he had difficulty grasping items. *See* Finding of Fact 6(e) above.

The medical records reflect the Claimant has reported pain in his hands, legs, and feet. *See* Finding of Fact 5(h) – (i) above. However, the medical records do not indicate the Claimant is incapable of sitting for periods of time due to pain. In addition, while he has reported numbness in his hands, and there may be some carpal tunnel issues, the examination of both upper extremities on both February 25, 2011 and March 25, 2011 was normal. *See* Finding of Fact 5(j) – (k) above. In summary, there is insufficient medical evidence in the record to corroborate the Claimant’s testimony that he was limited in his ability to sit or to grasp objects.

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 evidence, as discussed above, shows that the Claimant is capable of performing sedentary work, regardless of his reported pain and difficulty in grasping objects.

The medical vocational guidelines for a younger individual (ages 18 – 44) who is limited to sedentary work, who has a high school diploma or a GED, with work experience ranging from none to skilled – whether or not those skills are transferrable, direct a conclusion that the applicant is not disabled. 20 CFR Pt. 404, Subpt. P, App. 2, § 201.27 - 29.

The Claimant is a younger individual (age 39) with a GED, and what is, at a minimum, a semi-skilled work history (driving, commercial driver’s license, etc). *See* Findings of Fact 1 and 2 above. Because he is capable of sedentary work, the Social Security medical vocational guidelines, 20 CFR Pt. 404, Subpt. P, App. 2, § 201.27 – 29, direct a conclusion that the Claimant is not disabled.

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 February 25, 2011 Interim Assistance application.

CONCLUSIONS OF LAW

1. The Claimant is not employed and experiences severe impairments, specifically uncontrolled diabetes and diabetic neuropathy, which have lasted for longer than 12 months.

2. The Claimant's severe impairments do not meet or equal the Social Security Disability listings contained in 20 CFR Section 404, Subpart P, Section 1.
3. The Claimant's severe impairments prevent him from performing his previous relevant work.
4. The Claimant is capable of sedentary work.
5. Because the Claimant is capable of sedentary work, the Claimant is not disabled pursuant to the Social Security medical vocational guidelines, 20 CFR Pt. 404, Subpt. P, App. 2, § 201.27 – 29.
6. As a result, the Claimant has failed to prove, by a preponderance of the evidence, that he satisfies the Interim Assistance program's eligibility requirement that he is "likely to be found disabled by the Social Security Administration." See 7 AAC 40.180(b)(1).

DECISION

The Division was correct when it denied the Claimant's February 25, 2011 Interim Assistance application on April 22, 2011.

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. If the Claimant appeals, the 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. To appeal, 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


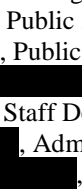
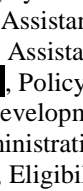
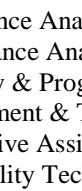
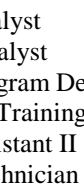
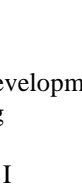
DATED this 1st day of August, 2011.

/Signed/
Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 1st day of August, 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:

 Public Assistance Analyst
, Public Assistance Analyst
, Policy & Program Development
, Staff Development & Training
, Administrative Assistant II
, Eligibility Technician I

/signed/

J. Albert Levitre, Jr.
Law Office Assistant I