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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-223
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Interim Assistance benefits on May 6, 2011. (Ex. 1) On June 8, 2011, the Division sent the Claimant notice his Interim Assistance application was denied. (Ex. 4) The Claimant requested a Fair Hearing on June 8, 2011. (Ex. 5)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on July 27 and August 30, 2011. The Claimant participated telephonically. He represented himself and testified on his own behalf. [REDACTED], Public Assistance Analyst with the Division, participated in person; he represented the Division and testified on its behalf. [REDACTED], Health Program Manager II with the Division, participated telephonically on August 30, 2011, and testified on behalf of the Division.

ISSUE

Was the Division correct when it denied the Claimant's May 6, 2011 Interim Assistance application on June 8, 2011?

SUMMARY OF DECISION

The Claimant is severely physically impaired due to his diabetes, high blood pressure, and chronic pain syndrome, which have lasted for longer than 12 months. However, these conditions do not meet or equal the Social Security disability listings. While he is unable to perform his previous relevant work, he is 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 May 6, 2011 Interim Assistance application.

FINDINGS OF FACT

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

1. The Claimant is currently 50 years old (birth date [REDACTED]). (Ex. 1) He completed high school and took some community college classes. (Claimant testimony)
2. The Claimant's most recent work experience was as a Personal Care Assistant. (Ex. 3.05; Claimant testimony) He has not worked since 2007. (Claimant testimony) He has also worked as a clerk in a convenience store and as a clerk/manager for an archery store/range. *Id.*
3. Dr. [REDACTED], D.O., completed a Preliminary Examination for Interim Assistance Form (AD #2) on the Claimant's behalf on May 5, 2011. (Exs. 3.02 – 3.03) On that form, Dr. [REDACTED] stated the Claimant had diagnoses of chronic pain syndrome, diabetes, and high blood pressure. (Ex. 3.03) Dr. [REDACTED] further stated the Claimant was not expected to recover from those conditions. *Id.*
4. The medical documents in the record do not show any documented instances of ketosis, neuropathy, or retinitis proliferans. (Exs. 3.02 – 3.03, 3.09 – 3.71; Ex A, pp. 3 – 38) The recent medical documents (from October 2008 forward) in the record also do not contain any medically noted limitations on the Claimant's ability to walk, stand, sit, or lift over a specified weight range. (Exs. 3.02 – 3.79)
5. The medical documents contained in the record, while showing the Claimant has ongoing high blood pressure, do not show any adverse cardiac system effects. (Exs. 3.02 – 3.03, 3.09- 3.71; Ex. A, pp. 3 – 38) The Claimant experiences occasional chest pain, as shown by the most recent reference in the record, which consists of April 19, 2011 clinical notes from the [REDACTED] Health Clinic. (Ex. 3.51) These read “[d]iscussed consult with Cardiology who recommended no further evaluation at this time. He is to [return to clinic] if symptoms redevelop.” (Ex. 3.51)
6. The Claimant has long standing medical issues involving pain, specifically in the groin and scrotal areas, which date back to 1992. (Ex. A, pp. 2 – 34) He has had both prolotherapy and nerve blocks for the pain. *Id.* On June 15, 2000, he was diagnosed with thoracic radiculopathy at T12. (Ex. A, p. 30) The most recent reference in his medical records referring to his groin pain issues is dated October 16, 2008. (Ex. 3.11)
7. There is only one imaging study in the record. It shows that as of February 10, 2011, the Claimant had degenerative changes of the cervical portion of the spine, with “disc space narrowing at C3 and C5 and reactive bone anteriorly. There is loss of normal curvature.” (Ex. 3.61) The same imaging study concludes that there are “[d]egenerative changes and evidence of muscle spasm.” *Id.*
8. On October 28, 2010, the Claimant went to the [REDACTED] Clinic with back pain. (Ex. 3.29) The Clinic notes show that he had lumbosacral tenderness, had a full range of motion, and normal gait. *Id.*
9. In addition, the Claimant was diagnosed and treated for cellulitis/right leg infection in March and April 2011. (Exs. 3.19, 3.52)

10. The Claimant testified as follows:

- a. He walks with a cane. He can walk for between one to two hundred feet, after which he needs to take a one or two second rest, and then can continue walking.
- b. He can sit for between an hour to an hour and one-half. He then requires a very short break from sitting.
- c. He can stand for anywhere from one minute to ten minutes, varying upon how he feels that day.
- d. He experiences lower back pain and groin pain. He has been dealing with this for 20 years. The groin pain is very intense. He experiences it three to four times per week. He can wake up with it, and it can also be instigated by minimal activity, such as bending over the sink and washing his hands. He controls his lower back pain and groin pain by being inactive.
- e. He experiences shooting stabbing pains in his feet, which he attributes to diabetic neuropathy. The foot pain occasionally interferes with his ability to drive.
- f. He has had cellulitis/leg infections six to seven times in the past year. Two of the past three incidents were almost severe enough to require him to be hospitalized. He was medically advised to stay in bed and prop his leg up to help control the swelling. He has been bedridden due to the cellulitis anywhere from a day or two to an entire week.
- g. He estimates that he would miss work from between five days to two weeks each month due to his health conditions.

11. The Claimant did not claim that he experienced any loss of function in his hands and arms. The medical documents in the record do not indicate that the Claimant has any loss of function in his hands and arms. (Exs. 3.02 – 3.03, 3.09- 3.71; Ex. A, pp. 3 – 38)

12. The Claimant completed a “Disability and Vocational Report” (form APA #4), which the Division received on May 6, 2011. (Exs. 3.04 – 3.06) In that report, the Claimant stated that he experiences “at least 3 back injuries T12 and two more close radiculopathy, arthritis, bone spurs in my back, bad right knee, fallen arch in left foot, bone spurs on left heal, bursitis in both hips, neuropathy in both hips, edema in both legs.” (Ex. 3.04) He further states that his back injuries cause him “to be nauseous. Just bending over to wash my hands can cause a lot of pain like I was kicked in the groin. I can have shooting abdominal pains and some days I can wake up having some or all these symptoms and more. Lifting 15 – 25 lbs can also bring on these symptoms.” *Id.*

13. The Division agrees that the Claimant satisfies the first steps of the Social Security disability analysis because he is not working, and that he has a severe impairments, as listed on the May 5, 2011 Preliminary Examination for Interim Assistance form (diabetes, high blood pressure, chronic pain

syndrome) that satisfy the durational requirement). (█ testimony) However, the Division denied the Claimant's application on June 8, 2011 (Ex. 4) for the following reasons:

- a. The Claimant does not meet or equal the Social Security listing for diabetes. (Ex. 3.01; █ 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. 3.01; █ testimony)
- b. The Claimant's high blood pressure is itself not listed as a disabling condition except through the disability listing for cardiac impairments. (█ testimony) However, hypertension by itself is not a disabling condition. *Id.* There needs to be symptomatic presentation of cardiac malfunction. *Id.* The Claimant's most recent medical records regarding his cardiac condition show that as of April 19, 2011, he was asymptomatic. (█ testimony; Exs. 3.51 – 3.52)
- c. The Claimant's pain falls within the Social Security disability category of musculoskeletal impairments. However, he is able to walk and his use of his upper extremities is not impaired. (█ testimony) In addition, the medical records do not show that the Claimant's ability to perform activities of daily living is affected. (█ testimony; Ex. 3.01)
- d. The Division did not investigate the Claimant's cellulitis because it was not listed as a diagnosis on the May 5, 2011 Preliminary Examination for Interim Assistance Form (AD #2). (█ testimony; Exs. 3.02 – 3.03) However, the Claimant's medical records do not show that it is either a severe impairment or that it is expected to last twelve months or longer. (█ testimony)
- e. The Claimant is capable of performing sedentary work, and consequently 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

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 years¹ are required to apply and qualify for federal Supplemental Security Income benefits. 7 AAC 40.170(a). Once an 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 over 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 CFR 416.1901; 20 CFR 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 CFR 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.

¹ Adult Public Assistance applicants whose income exceeds the Supplemental Security Income standards are also not required to apply for Supplemental Security Income benefits. 7 AAC 40.170(a).

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.² These elements are not one hundred percent identical to the elements that a federal Supplemental Security Income applicant must satisfy. *See* 20 CFR 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 CFR 416:

² **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.

- (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.

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 CFR 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.”
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 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(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 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.
- 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 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.
3. 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.

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 CFR 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 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 an individual in the 50 to 54 age range, who is limited to sedentary work, who has a high school diploma or a GED, who has unskilled work experience, direct a conclusion that the applicant is disabled. 20 CFR Pt. 404, Subpt. P, App. 2, § 201.12. In contrast, those same guidelines provide that if that same individual has skilled or semi-skilled work experience which is transferable, he is not disabled. 20 CFR Pt. 404, Subpt. P, App. 2, § 201.15.

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).

“Skilled” work consists of work where “a person uses judgment to determine the machine and manual operations to be performed. . . . Other skilled jobs may require may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.” 20 CFR 416.968(c). “Semi-skilled” work “is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention.” 20 CFR 416.968(b). A job skill is transferable if it can be used in other jobs. 20 CFR 416.968(d)(1).

ANALYSIS

The issue in this case is whether the Division was correct when it denied the Claimant’s May 6, 2011 Interim Assistance application on June 8, 2011. 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, i.e. that he is not working, and that he has severe impairments (diabetes, high blood pressure, and chronic pain syndrome) which satisfy the durational requirement. *See* Finding of Fact 12 above. It is therefore necessary to proceed to the next step of the Social Security disability analysis and determine if his severe physical impairments meet or medically equal the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1.

I. Meeting or Equaling the Social Security Impairment Listings.³

³ The Claimant testified regarding his cellulitis/leg infection. *See* Finding of Fact 10(f). Cellulitis/leg infection was not listed as a diagnosis on his May 5, 2011 Preliminary Examination for Interim Assistance forms (form AD #2). *See* Finding of Fact 3 above. While there is some limited reference to his cellulitis/leg infections in the Claimant’s medical records, there is insufficient medical evidence in the record to even meet the threshold requirement, contained in 20 CFR 416.920(a)(4)(ii), that the cellulitis is (a) a severe impairment that has (b) lasted or can be expected to last for a continuous period of twelve months or longer. *See* Finding of Fact 9 above. This Decision will therefore restrict itself solely to the diagnoses contained in the Claimant’s May 5, 2011 Preliminary Examination for Interim Assistance forms, specifically diabetes, high blood pressure, and chronic pain syndrome. *See* Finding of Fact 3 above.

A. Diabetes.

The Social Security disability system classifies the Claimant's diabetes 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:

1. 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
2. Acidosis⁴ occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO₂ or bicarbonate levels); or
3. Retinitis proliferans;⁵ evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

1. Neuropathy.

The Claimant testified that he experienced neuropathy, consisting of shooting stabbing pains in his feet. *See* Finding of Fact 10(e) above. However, there is no mention of neuropathy in the Claimant's medical records. *See* Finding of Fact 4 above. Because there is no indication of neuropathy in the Claimant's medical records, Claimant, despite his testimony, does not meet or equal the Social Security standard for disability due to diabetic neuropathy, which specifically requires that he experience "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.

2. Acidosis.

The Claimant's medical reports contain no indication that the Claimant experiences acidosis. *See* Finding of Fact 4 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.

3. 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

⁴Acidosis, 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).

⁵Retinitis 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).

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 no indication of Retinitis Proliferans. *See* Finding of Fact 4 above. Because there is no medical evidence of Retinitis Proliferans in the record, 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.

B. High Blood Pressure.

High blood pressure (hypertension) is listed under the Social Security disability listing for cardiac impairments. 20 CFR Part 404, Subpart P, Appendix 1, § 4.00H1. In order for high blood pressure to meet or equal the listing, it must be evaluated to determine whether it meet or equals the disability listings for other body systems (“heart, brain, kidneys, or eyes”) affected by the high blood pressure. *Id.*

There is no indication in the medical record that the Claimant’s “heart, brain, kidneys, or eyes” are impaired as a result of the Claimant’s high blood pressure. While the Claimant has experienced occasional chest pain, the last reference to cardiac conditions contained in the Claimant’s medical records, shows that as of April 19, 2011, that “Cardiology . . . recommended no further evaluation at this time. He is to [return to clinic] if symptoms redevelop.” *See* Finding of Fact 5 above. Because there is no medical evidence in the record that the Claimant’s high blood pressure has affected his “heart, brain, kidneys, or eyes,” the Claimant does not meet or equal the Social Security listing for disability for high blood pressure. *See* 20 CFR Part 404, Subpart P, Appendix 1, § 4.00H1.

C. Chronic Pain Syndrome.

There is no specific listing for chronic pain contained in the Social Security disability listings. Because it is attributed to T12 (thoracic vertebrae) radiculopathy, the appropriate disability listing is 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).

The only medical evidence regarding the Claimant’s ability to walk states that as of October 28, 2010, he had a normal gait. *See* Finding of Fact 8 above. There was no medical evidence that showed any limitation on the Claimant’s use of his upper extremities. *See* Finding of Fact 11 above.

The Claimant testified that he walks with a cane. *See* Finding of Fact 10(a) above. He also testified that he can walk for between one to two hundred feet, and then needs to rest for a second or two before

continuing walking. *See* Finding of Fact 10(a) above. He did not provide any testimony that the use of his hands or arms (upper extremities) was in any way affected. *See* Finding of Fact 11 above.

Neither walking with a cane, or having to take a one or two second break while walking are an “extreme limitation of the ability to walk” which 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 CFR Pt 404, Subpart P, Appendix 1, § 1.00(B)(2)(b)(2). Because there is no medical evidence showing that the Claimant’s ability to walk is “extremely limited” 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 CFR Pt 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1) and 1.00(B)(2)(c). In addition, the Claimant’s own testimony, because it is not medical evidence, provides no support for a showing that the Claimant meets or equals the Social Security musculoskeletal disability listing.

In summary, the Claimant’s diabetes, high blood pressure, and chronic pain syndrome do not meet or equal the Social Security disability listings contained in 20 CFR 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.

II. Previous Relevant Work.

The Claimant’s most recent work experience was as a Personal Care Assistant. *See* Finding of Fact 2 above. He has also worked as a clerk in a convenience store and as a clerk/manager in an archery store/range. *Id.*

The Claimant testified that he can stand for up to ten minutes and that he can walk only up to two hundred feet without taking a one or two second break. *See* Finding of Fact 10(a) and (c) above. The May 6, 2011 “Disability and Vocational Report” which he completed states that lifting 15 – 25 pounds could bring on his pain symptoms. *See* Finding of Fact 12 above.

The Claimant’s recent medical records, however, are devoid of any reference to standing, walking, or lifting limitations. *See* Finding of Fact 4 above. The records show, as recently as October 28, 2010, that the Claimant, while experiencing lumbosacral tenderness, had a full range of motion and a normal gait. *See* Finding of Fact 8 above. In addition, the medical records show that the Claimant has T12 radiculopathy, degenerative changes to the cervical portion of his spine, loss of normal curvature, evidence of muscle spasms and “disc space narrowing at C3 and C5.” *See* Findings of Fact 6 and 7 above

The Division did not venture an opinion on whether the Claimant could perform his previous relevant work.

The only recent medical evidence in the record shows the Claimant does experience low back pain (lumbosacral tenderness), and that he has degenerative changes to the cervical portion of his spine. *See* Findings of Fact 7 and 8 above. This corroborates, to some degree, the Claimant’s testimony that he is limited to some extent on his ability to walk distances, stand for extended periods of time, and lift

heavy objects. Lifting heavy objects is part of a Personal Care Assistant's duties and part of working in a convenience store. Standing for extended periods of time is also part of job requirements working as a clerk in any type of a store.

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 CFR 416.920(a)(4)(v).

III. Performing Other Work.

The Claimant testified that he could sit up to an hour and one half and then take a short break, stand for up to ten minutes, and that he can walk only up to two hundred feet without taking a one or two second break. *See* Finding of Fact 10(a) - (c) above. The May 6, 2011 "Disability and Vocational Report" which he completed states that lifting 15 – 25 pounds could bring on his pain symptoms. *See* Finding of Fact 12 above.

The medical records reflect the Claimant has lumbosacral tenderness, T12 radiculopathy, degenerative changes to the cervical portion of his spine, loss of normal curvature, and "disc space narrowing at C3 and C5." *See* Findings of Fact 6 - 8 above

However, the medical records do not indicate the Claimant is incapable of sitting for periods of time due to pain, or that he has standing or lifting restrictions. *See* Finding of Fact 4 above. In addition, he has a full range of motion. *See* Finding of Fact 8 above

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, by the fact that he can sit for periods of time and by his statement that his chronic pain is triggered by lifting items that weigh 15 to 25 pounds, i.e. more than 10 pounds.

The medical vocational guidelines for an individual, in the 50 to 54 age range, who is limited to sedentary work, who has a high school diploma or a GED, who has unskilled work experience, direct a conclusion that the applicant is disabled. 20 CFR Pt. 404, Subpt. P, App. 2, § 201.12. In contrast, those same guidelines provide that if that same individual has skilled or semi-skilled work experience which is transferable, he is not disabled. 20 CFR Pt. 404, Subpt. P, App. 2, § 201.15.

The Claimant falls within the 50 to 54 year age range, and has a high school diploma. *See* Finding of Fact 1 above. He has worked as a retail manager. *See* Finding of Fact 2. This is, at a minimum, a semi-skilled occupation: it requires working with other people, paying close attention to detail, and making decisions regarding the day to day operation of the retail establishment. *See* 20 CFR 416.968(b). It could also be a skilled occupation, depending upon the degree of managerial independence and size of the business. *See* 20 CFR 416.968(c). The skills attendant in managing a retail establishment are people and detail skills, which are readily transferable. *See* 20 CFR 416.968(d)(1).

The Claimant does have some non-exertional limitations, as shown by the medically documented back pain issues and his testimony regarding his groin pain. However, the Claimant, by his own admission contained in his May 6, 2011 "Disability and Vocational Report", does not trigger the pain until he lifts over 15 pounds, i.e. it is not triggered by the 10 pound sedentary work limitation. Because the Claimant is capable of sedentary work, the Social Security medical vocational guidelines, 20 CFR Pt. 404, Subpt. P, App. 2, § 201.15, 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 May 6, 2011 Interim Assistance application.

CONCLUSIONS OF LAW

1. The Claimant is not employed and experiences severe impairments (diabetes, high blood pressure, and chronic pain syndrome), 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, § 201.15.
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 May 6, 2011 Interim Assistance application on June 8, 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:

