

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)	
)	OAH No. 13-0430-APA
B B)	Division No.
_____)	

FAIR HEARING DECISION

I. Introduction

B B applied for Interim Assistance on January 30, 2013.¹ A disability adjudicator employed by the Division of Public Assistance (Division) concluded that while Mr. B was physically impaired, he did not qualify for Interim Assistance. The Division notified Mr. B that his application was denied. He requested a hearing.

Mr. B's hearing was held on April 25, 2013. Mr. B represented himself and testified on his own behalf. D N, S T, and E L testified on his behalf. Terri Gagne, Public Assistance Analyst with the Division, represented the Division. Jamie Lang, a Division Disability Adjudicator, testified on behalf of the Division.

This decision concludes that Mr. B has severe physical impairments which meet the 12-month durational requirement. However, Mr. B's physical impairments do not meet or equal the Social Security disability listings. As a result, Mr. B does not satisfy the Interim Assistance program's eligibility requirement that he be "likely to be found disabled by the Social Security Administration."² The Division's decision denying his Interim Assistance application is affirmed.

II. Facts

The following facts were established by a preponderance of the evidence.

Mr. B was severely injured in a snow machine accident on January 21, 2013. He was hospitalized for seven days due to his injuries, which included a closed head injury with internal bleeding, fractures of the ribs, left clavicle, facial bones surrounding the left eye, sternum, right finger, and a lacerated spleen.³

¹ Ex. 2.

² See 7 AAC 40.180(b)(1).

³ Ex. 2.5.

Mr. B does not have medical coverage. He has not been able to afford medical care for his injuries. He was able to obtain a grant and had his eye operated on.⁴ He testified that he experiences frequent migraine headaches, blurred vision, eye twitching, numbness in a portion of his face, and has recently been experiencing nighttime urinary incontinence. He was able to obtain a grant to see a neurologist. However, at the time of his hearing, he had not been able to schedule an appointment.⁵

Mr. B's application was supported by three "Preliminary Examination for Interim Assistance" forms. The first is dated in late January 2013.⁶ That form was signed by Dr. Thomas. It contained diagnoses of closed head injury, splenic and perinephric hematomas, and orbital, sternal and clavicle fractures. The form stated Mr. B would recover from his injuries, but that the recovery period would take 12 months or longer.⁷ The second is dated February 21, 2013, and is signed by Dr. Friderici. It included diagnoses of head trauma and internal bleeding, anemia, laceration of the spleen, a perinephric hematoma, and sternal, clavicle, and finger fractures. It indicated that Mr. B was expected to recover from these conditions within approximately six months.⁸ The third is dated March 26, 2013 and is also signed by Dr. Friderici. It contained the same diagnoses as the February 21, 2013 form, with the addition of traumatic brain injury and severe headaches. It indicated that Mr. B is expected to recover from his conditions, but specifically indicated that his recovery time for his head trauma, traumatic brain injury, and severe headaches was expected to take 12 months or longer.

D N, who is Mr. B's patient advocate, but who does not have medical training, testified that Mr. B experiences blurred vision, dizzy spells, and nausea, and that it is difficult for him to focus and articulate.⁹ S T, Mr. B's roommate, testified that he cannot drive, has memory problems, walks like an old man, and experiences headaches and dizziness.¹⁰

As of April 1, 2013, Mr. B's fractured right finger was not healed. However, the doctor would not diagnose it as a non-union, because the fracture was only 2.5 months post-injury.¹¹ As of March 18, 2013, his rib fractures were healing, his spleen laceration was stable and his

⁴ B testimony.

⁵ B testimony.

⁶ The exact date on the document is illegible. Ex. 2.108.

⁷ Ex. 2.108.

⁸ Ex. 2.109. The handwriting on this exhibit verges on the illegible.

⁹ N testimony.

¹⁰ T testimony.

¹¹ Ex. 2.115.

kidney hematoma was resolving. He had “minor degenerative changes” in his spine.¹² As of April 8, 2013, his vision, although blurry, was essentially within normal limits.¹³

Jamie Lang, the Division’s medical reviewer, determined that Mr. B was not likely to meet the Social Security Administration’s (SSA) disability criteria based upon his medical conditions.¹⁴ She did not dispute that he was severely physically impaired but concluded that Mr. B’s injuries would not meet the 12-month durational requirement, and that he therefore would not qualify for Interim Assistance.

Ms. Lang took the additional step of determining whether Mr. B’s fractured right finger, brain injury, and headaches met or equaled the applicable SSI disability listings. She concluded that his fractured right finger did not qualify him under the SSI disability listing for musculoskeletal disorders. She further concluded that applicable SSI disability listings for his brain injury and headaches were either organic mental disorders or epilepsy; they did not meet or equal those listings.¹⁵ The Division denied his application for Interim Assistance.¹⁶

III. Discussion

A. *The Three Step Disability Determination Process*

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”¹⁷ Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income (SSI) benefits.¹⁸ Once an applicant is approved for SSI benefits, he or she is then eligible to receive Adult Public Assistance benefits.¹⁹

Interim Assistance is a monthly payment in the amount of \$280 provided by the State to qualifying Adult Public Assistance applicants while they are waiting for the SSA to approve their SSI application.²⁰ In order to qualify for Interim Assistance, the applicant must be “likely to be

¹² Ex. 2.119.

¹³ Ex. 2.121.

¹⁴ Exs. 2.1a - d; Lang testimony.

¹⁵ Exs. 2.1a - d; Lang testimony.

¹⁶ Ex. 2.110.

¹⁷ AS 47.25.430.

¹⁸ 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the SSI standards are not required to apply for SSI benefits. 7 AAC 40.170(a).

¹⁹ 7 AAC 40.030(a); 7 AAC 40.170(a).

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

found disabled by the Social Security Administration.”²¹ An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.²²

The SSA uses a five-step evaluation process in making its disability determinations.²³ Each step is considered in order, and if the SSA finds the applicant either disabled or not disabled at any step, it does not consider subsequent steps.²⁴

The Division uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.²⁵ The first step looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the applicant is not disabled.²⁶ If the applicant is not performing “substantial gainful activity,” it is necessary to proceed to step two.

The second step requires the evaluation of the severity and duration of the applicant’s impairment. Medical evidence, which consists of “signs, symptoms, and laboratory findings, not only [the applicant’s] statement of symptoms,” is required to establish an applicant’s impairment.²⁷ In order to be considered disabled, the impairment or combination of impairments must be severe²⁸ and must be expected to result in death or must have lasted or be expected to last at least 12 months.²⁹ If the impairment is not severe or does not meet the duration requirement, then the applicant is not disabled. If the impairment is severe and meets the duration requirements, then it is necessary to proceed to step three.

The third step requires the evaluation of whether the impairment meets or equals one of the disability listings adopted by the SSA. By regulation, the Division does not use the most current version of the SSA disability listings. Instead, it is required to use the “Social Security Administration disability criteria for the listings of impairments described in 20 C.F.R. 404,

²¹ 7 AAC 40.180(b)(1).

²² 2 AAC 64.290(e).

²³ 20 C.F.R. § 416.920.

²⁴ 20 C.F.R. § 416.920(a)(4).

²⁵ *In re M. H.*, OAH Case No. 12-0688-APA. (Commissioner of Health and Social Services 2012) <http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf> at 2.

²⁶ 20 C.F.R. § 416.920(a)(4)(i).

²⁷ 20 C.F.R. § 416.908.

²⁸ 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).

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

Subpart P, Appendix 1, as revised as of April 1, 2005, and adopted by reference.”³⁰ If an applicant’s impairment meets or equals one of the applicable SSA disability listings, the applicant is disabled³¹ and qualifies for Interim Assistance. If the applicant’s impairment does not meet or equal one of the SSA listings, the applicant does not qualify for Interim Assistance.³²

B. Application of the Three Step Process

The Division’s decision to deny Mr. B’s application was based upon the review by Jamie Lang, its medical reviewer. She determined that he satisfied step one of the process because he had not worked since January 2013. She did not dispute that his impairments were severe, but determined that Mr. B’s impairments would not remain severe for long enough to satisfy the 12-month duration requirement contained in the second step of the SSI disability determination process. The most recent medical statement regarding Mr. B’s medical conditions supports her determination for the most part. The March 26, 2013 “Preliminary Examination for Interim Assistance” form completed by Dr. Friderici contains a list of Mr. B’s medical diagnoses and indicates that his recovery period for most of them is approximately six months. However, for three conditions, his head trauma, traumatic brain injury, and severe headaches, his recovery period was expected to take 12 months or longer.³³ Accordingly, Mr. B does satisfy the duration requirement for these three conditions. Each of these conditions will be examined below to determine if they satisfy the third step of the SSI disability determination process, which requires that any of the conditions meet or equal the applicable SSI disability listing.

Mr. B testified about recent nocturnal incontinence episodes. There is no reason to disbelieve him. However, the limited record in this case does not contain any medical records that diagnose or identify incontinence as an issue.³⁴ It will therefore not be addressed further

1. Head Trauma and Traumatic Brain Injury

Mr. B’s head trauma and traumatic brain injury fall within the SSA listing for organic mental disorders.³⁵ This listing requires that there be (1) a “loss of specific cognitive abilities or

³⁰ 7 AAC 40.180(b)(1)(B). The SSA disability listings are located at 20 C.F.R. Pt. 404, Subpart P, Appendix 1. The version of those listings in effect as of April 1, 2005 is located online at <http://www.gpo.gov/fdsys/pkg/CFR-2005-title20-vol2/pdf/CFR-2005-title20-vol2-part404-subpartP-app1.pdf>

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

³² *In re M. H.*, OAH Case No. 12-0688-APA. (Commissioner of Health and Social Services 2012) <http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf> at 2.

³³ Ex. 2.3.

³⁴ Medical evidence is required to support an applicant’s statements of symptoms. 20 C.F.R. § 416.908.

³⁵ Cerebral trauma is evaluated under either epilepsy (§ 11.00), or organic mental disorders (§12.02). See 20 C.F.R. Pt 404, Subpart P, Appendix 1, § 11.18.

affective changes and the medically documented persistence” of specific symptoms,³⁶ plus (2) a marked restriction/difficulty with at least two of the following: activities of daily living, social functioning, concentration/persistence/pace, and repeated extended decompensation episodes.³⁷ Alternatively, the listing allows for eligibility if the evidence includes a “[m]edically documented history of a chronic mental disorder of at least 2 years’ duration” and the applicant meets one of the specific criteria described in the regulation.³⁸ Here, no medical documentation exists to establish a chronic mental disorder of at least two years duration. Ms. N’s and Ms. T’s testimony, while demonstrating that Mr. B’s mental functioning is affected, is not medical evidence. The record in this case is completely lacking such documentation.³⁹ As a consequence, Mr. B does not meet or equal the SSA listing for organic mental disorders.

2. *Severe Headaches*

Mr. B testified regarding his severe headaches/migraine headaches. He does have a medical diagnosis of severe headaches. The Division’s medical reviewer determined his headaches would fall under the SSA disability listing for epilepsy. This same listing is also used to evaluate traumatic brain injury.⁴⁰ The listing requires that there be some evidence of a persistent seizure disorder, which continues despite treatment.⁴¹ However, no medical evidence shows that Mr. B is experiencing seizures. Absent such evidence, he does not meet or equal this listing.

IV. **Conclusion**

Mr. B has continuing severe effects from his January 2013 snow machine accident. However, most of his diagnoses do not meet the 12-month duration requirement needed to establish disability. Of those that do, there is insufficient medical evidence in the record to support a finding that he meets or equals the applicable Social Security disability listing. As a result, Mr. B did not meet his burden of proving that he is likely to be found disabled by the

³⁶ The applicant must have at least one of the following symptoms: time/place disorientation, memory impairment, disturbances in thinking/perception such as hallucinations or delusions, personality change, mood disturbances, emotional lability and impaired impulse control, or a loss of at least 15 IQ points. *See* 20 C.F.R. Pt 404, Subpart P, Appendix 1, § 12.02A.

³⁷ *See* 20 C.F.R. Pt 404, Subpart P, Appendix 1, § 12.02B.

³⁸ *See* 20 C.F.R. Pt 404, Subpart P, Appendix 1, § 12.02C.

³⁹ At hearing, Mr. B testified that he was able to obtain a grant to see a neurologist. The results of that consultation may result in such documentation. However, there is no such documentation contained in the record for this case.

⁴⁰ *See* 20 C.F.R. Pt 404, Subpart P, Appendix 1, §§ 11.00F, 11.01, 11.18.

⁴¹ *See* 20 C.F.R. Pt 404, Subpart P, Appendix 1, § 11.02.

Social Security Administration due to his physical impairments. The Division's decision to deny his application for Interim Assistance benefits is affirmed.

DATED this 29th day of May, 2013.

Signed

Lawrence A. Pederson
Administrative Law Judge

Adoption

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

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

DATED this 12th day of June, 2013.

By: *Signed*

Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge, DOA/OAH

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