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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-378
)
 Claimant.) Division Case No. [REDACTED]

FAIR HEARING DECISION

STATEMENT OF THE CASE

Mr. [REDACTED] (Claimant) applied for Interim Assistance benefits on August 8, 2011¹. (Exs. 1, 2) On September 23, 2011, the Division of Public Assistance (Division) sent Claimant written notice his Interim Assistance application was denied. (Ex. 5) Claimant requested a Fair Hearing on October 3, 2011. (Exs. 6, 7)

This Office has jurisdiction pursuant to 7 AAC 49.010 *et. seq.*

A Fair Hearing was held on November 3, 2011. Claimant attended the hearing by telephone, represented himself and testified on his own behalf. Mr. [REDACTED], Public Assistance Analyst with the Division, attended in person, represented the Division and testified on its behalf. Mr. [REDACTED], Interim Assistance Medical Reviewer with the Division (Medical Reviewer), attended by telephone and testified on behalf of the Division.

ISSUE

Was the Division correct when it denied the Claimant's August 8, 2011 Interim Assistance application on September 23, 2011?

SUMMARY OF DECISION

Claimant applied for Interim Assistance based on his lumbar disc protrusion with osteophyte. The Division of Public Assistance determined Claimant was not likely to be found disabled by the Social Security Administration when it examined Claimant's medical documentation as required by 7 AAC 40.180. Claimant did not provide the preponderance of the evidence proving he was eligible for Interim Assistance.

¹ Claimant signed his application in three places with the date "9-8-2011." (Exs. 2, 2.7, 2.8) However, the Division date stamped the application as received on August 8, 2011 and therefore the correct date of application is deemed when the Division received it. (Ex. 2)

Therefore, the Division was correct when it denied the Claimant's August 8, 2011 Interim Assistance application on September 23, 2011.

FINDINGS OF FACT

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

1. Claimant is a 39 year old man with uncontrolled diabetes, type II, who lives in a recreational vehicle² located beside the home of a family of friends. (Ex. 2.1; Exs. 4.34-4.40; Claimant's testimony) Claimant is about six foot seven inches tall, weighs 285 pounds, considers himself about 40-50 pounds overweight and "the rest is muscle." (Claimant's testimony) Claimant smokes cigarettes, approximately one packet per day since age 15. (Exs. 4.13, 4.17)
2. Claimant's education, as self-reported, is that he has a General Equivalency Diploma (GED) and attended "cdl" (commercial driver's license) school. (Ex. 4.25)
3. Claimant disclosed his past relevant work as:
 - a. 2009 – taxi cab driver, including lifting luggage
 - b. 2008-2009 tow truck operator, including lifting cables and chains
 - c. 2008 security person at "clubs," including crowd management of drunk people
 - d. 2007-2008 tire changer at a tire store

(Exs. 4.23-4.24)

Claimant testified that he has never done any job that didn't involve driving a vehicle, walking, operating equipment, manual labor and he cannot do any of those jobs any more. (Claimant's testimony)

4. On August 8, 2011, Claimant applied for Interim Assistance. (Exs. 1; 2-2.9) The basis of his application was that he suffers back problems resulting from injury to two discs, for which he had three prior surgeries. (Claimant's testimony) His ability to walk has deteriorated and he has a lot less strength on his left side. (Claimant's testimony) Claimant testified he takes medications, including hydrocodone (10 mg about every 3-4 hours) for the pain he feels, and although he could do a job using his "upper extremities," there is "no way I could work an 8 hour day due to medications."
5. On September 21, 2011, the Division's Interim Assistance Medical Reviewer notified the Division of Public Assistance he denied Claimant's application because his review of the evaluation of Claimant's medical condition and of available medical documentation resulted in a finding that Claimant "does not appear likely to be approved for social security disability...." (Ex. 4)
6. On September 22, 2011, the Division's Eligibility Technician checked the computer interface with the Social Security Administration (SSA) and learned that Claimant's application for Supplemental Security Income (SSI) had been denied and was "in appeals status." (Ex. 3) The Social Security

² The recreational vehicle is the "drive away" style, the kind that requires stepping into it, about 25 to 30 feet long, located about 10 minutes drive to the post office box. It is parked nearby a family residence occupied by his friend, his friend's wife and their son.

Administration denied his application on May 18, 2011. (Ex. 12) The reason given for the denial was that Claimant had the “capacity for substantial gainful activity, other work, no visual impairment.” (Ex. 12.3; Medical Reviewer’s testimony) The appeal date shown was June 22, 2011. (Ex. 12.3)

7. On November 3, 2011 during the Fair Hearing, Claimant stated his appeal of June 22, 2011 was denied and he had not appealed the second denial of his SSI application by the Social Security Administration. (Claimant’s testimony; Hearing Representative’s testimony) Claimant is scheduled to meet with a back surgeon on November 15, 2011 to discuss possible removal of a disc and vertebrae fusion, or to release pressure on the same discs that were treated surgically previously. His first surgery was in 1995 or 1996; he had a second surgery in 2005 and a third six months later. (Claimant’s testimony) Claimant also stated he would decide after the surgery if he would appeal the second denial of his SSI application, depending on his surgeon’s recommendation. (Claimant’s testimony)

8. Claimant described a day in his life as including sleeping up to 12 hours a day due to his medication, watching TV, taking about a half-hour walk along a road for exercise, and driving himself to go wherever he needs, for example to get groceries. Claimant does his own cleaning and takes his laundry once weekly to the laundromat. Claimant drives himself to his doctor’s visits and to the post office. He cannot lift even 10 pounds of groceries. He cannot sit longer than one-half hour without getting up to stretch and move around for a couple of minutes. He checks in at his friend’s house daily and may spend from 5 minutes to several hours visiting with the family. (Claimant’s testimony)

9. Claimant submitted medical documentation in support of his application as follows:

a. Claimant’s regular doctor is Ms. [REDACTED], PA-C, at [REDACTED], Inc., whom he sees when he feels it is necessary. (Claimant’s testimony) Ms. [REDACTED] has not prescribed any treatment for his back but she did refer him to a pain management clinic and encouraged him to see a back surgeon. (Claimant’s testimony) Claimant was not seen at the pain management clinic. (Claimant’s testimony)

b. Ms. [REDACTED]’s records of Claimant’s visits are as follows:

1. February 25, 2011: “patient in for diabetes” follow-up and diagnosis of “diabetes with peripheral circulatory disorders type II or unspecified type uncontrolled, unspecified essential hypertension, polyneuropathy in diabetes, carpal tunnel syndrome.” Claimant’s gait was described as “cautious and shuffling.” She modified Claimant’s medications and advised “he needs to get busy and start doing some type of exercise – he would benefit mentally and physically” (Exs. 4.17-18)

2. March 25, 2011: Claimant was seen for “hand numbness.” Claimant’s gait was described as “normal.” Claimant was noted as “has musculoskeletal symptoms, back pain, body aches.” She wrote: “encouraged increase in outdoor/community activity for mental/physical health.” (Exs. 4.15-16)

3. June 17, 2011: Claimant was seen was for back pain experienced for one week; the report states he “just woke up with pain.” “Gait is described as cautious with a left side limp.” (Exs. 4.13-14)

4. July 1, 2011: Claimant was seen for hypertension. There is no mention of back pain or musculoskeletal condition. (Ex. 4.12)

5. July 29, 2011: report deals only with medications and lab results for hemoglobin and diabetes tests. No mention of back pain. (Ex. 4.11)

6. September 12, 2011: Claimant was seen for pain described as tingling in left foot, feeling weaker on left side, “finds himself dragging left foot at times.” Claimant was prescribed medications. (Ex. 4.04)

c. An Imaging Result Report of Claimant’s MRI Lumbar Spine w/o Contrast made on July 26, 2011. The report states the impression as: “1. L4-5 small to moderate residual recurrent central disc extrusion with effacement of the left lateral recess and mild left foraminal stenosis. 2. L5-S1 left sided disc protrusion and osteophyte resulting in moderate to severe foraminal stenosis as well as left lateral recess stenosis. Not mentioned above is a small posterior central subligamentous disc extrusion at this level which does not cause any significant canal stenosis.” (Ex. 4.10)

d. A report of Dr. [REDACTED], M.D., CDE, of [REDACTED] Center, is Claimant’s doctor for his diabetes, whom he sees regularly every three months. (Claimant’s testimony) On August 2, 2011, Dr. [REDACTED] reported that Claimant has inadequately controlled hyperglycemia, inadequately controlled hypertension, and inadequately controlled hyperlipidemia. (Ex. 4.38) In the same report, Dr. [REDACTED] noted his assessment of Claimant as “Diabetes: Type 2 uncontrolled ... treated with type 2 insulin...” (Ex. 4.39) Dr. [REDACTED] also assessed Claimant with diabetes with renal manifestation, neurologic manifestations, and polyneuropathy.³ (Ex. 4.39)

10. In support of his Interim Assistance application, Ms. [REDACTED] completed the form titled “Medical Source Statement of Ability to Do Work-Related Activities (Physical) on August 25, 2011. (Exs. 4.5-4.8) Ms. [REDACTED] based her responses on the form on what she and a nurse observe each time Claimant walks into and out of Ms. [REDACTED]’s office and from his answers to her questions. (Claimant’s testimony) Ms. [REDACTED] tested his leg strength by having him push his foot against her hand and push his leg against the resistance of her hand in various directions. (Claimant’s testimony)

11. Claimant’s doctor, Ms. [REDACTED], recommended exercise. (Exs. 4.16, 4.18) Claimant walks every day for exercise but does not have money to do any physical fitness exercises. (Claimant’s testimony)

12. On August 18, 2011, Ms. [REDACTED], PA-C and Dr. [REDACTED], MD, co-signed a completed Preliminary Examination for Interim Assistance Form (AD #2) diagnosing Claimant’s back problem as “lumbar disc protrusion/osteophyte” from which Claimant was not expected to recover within 12 months or more. (Exs. 4.19-4.20)

³ Claimant did not allege his diabetes was an impairment for which he should obtain Interim Assistance. Claimant provided no diagnosis of diabetes, in this case, supporting his application. In fact, on August 1, 2011, this Office decided Claimant’s prior application for Interim Assistance on grounds he was impaired due to diabetes and found he was not disabled by diabetes because he could perform sedentary work. *See* Case 11-FH-184.

13. The Division's Interim Assistance Medical Reviewer agrees that the Claimant satisfies the initial steps of the Social Security Administration disability evaluation: 1) Claimant is not currently doing substantial gainful activity and 2) Claimant has a severe medically determinable impairment that limits his work activities. The Division concedes Claimant is unlikely to be able to do his past work. (Medical Reviewer's testimony)

14. The Division denied Claimant's application on September 23, 2011 because it determined Claimant did not meet the disability requirements for Adult Public Assistance and Medicaid. (Ex. 5) In particular, the Division's Medical Reviewer determined Claimant "does not appear likely to be approved for social security disability based on the available documentation" in Claimant's August 8, 2011 Application. (Ex. 4)

15. At the Fair Hearing, the Division's Medical Reviewer detailed the basis for his determination that Claimant was unlikely to be determined disabled by the SSA:

- a. Claimant has been determined by another unit of the Division to be not currently engaged in any substantial gainful activity, and he relies on that determination.
- b. Claimant has a severe medically determinable impairment that significantly impacts his ability to do basic work activities. But Claimant has not had this severe medically determinable impairment for a minimum of 12 months nor shown it is expected to last for a minimum of 12 months, because he is expecting surgery to correct his problem. He was diagnosed with lumbar disc protrusion with osteophyte. His medical documentation shows in March 2011 his gait was described as normal and only in September 2011 did he have indication of de-conditioning with a reported foot drop.
- c. Claimant does not meet or equal the Social Security listing, subsection 1.04 of 20 C.F.R. Part 404, Subpart P, Appendix 1 for musculoskeletal disorders of the spine. (Reviewer's testimony) Specifically, he does not meet the Social Security listing of impairments requiring nerve root compression.
- d. Claimant is capable of performing sedentary work, and was determined to be capable of sedentary work by the SSA, which denied his SSI application on that basis.

(Medical Reviewer's testimony)

16. Claimant agreed the SSA had denied his SSI application a second time on grounds that he could do sedentary work, and in particular two jobs were identified by the SSA that he could do. Those two jobs were monitoring security cameras and as a responder to questions from telephone callers. (Claimant's testimony)

17. On cross-examination by Claimant, the Medical Reviewer explained that he could not make a determination that Claimant's medications impaired Claimant's ability to do sedentary work without something in the medical records showing that the pharmacological regimen Claimant is on would impair his work activity. (Medical Reviewer's testimony)

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof

Alaska Regulation 7 AAC 40.050(a) expressly provides “[a]ll applicants must “furnish adequate evidence to demonstrate ... eligibility for assistance.” More generally, as an applicant for Interim Assistance benefits, the Claimant has the burden of proving that he is eligible for the benefits he seeks. *See, State of Alaska Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). And, 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 application for Supplemental Security Income. 7 AAC 40.170(a) and (b); AS 47.25.255.

To be eligible for Interim Assistance, an applicant must be “likely to be found disabled by the Social Security Administration.” 7 AAC 40.180(b)(1). The Division must determine whether an applicant would “be found disabled by the Social Security Administration.” 7 AAC 40.180(b). In making this determination, the Division is required to review the medical information provided by the applicant to see if the applicant’s alleged impairment(s) meet the disability criteria for at least one impairment listed in the Social Security regulations. 7 AAC 40.180(b).

The Social Security disability determination process involves a five-step “sequential evaluation process.” 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).
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 C.F.R. § 416.920(c). Medical evidence is required to establish an applicant’s impairment and an applicant’s statements, alone, are insufficient. 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).

The second part of step two considers if the applicant’s severe impairment lasted for a continuous period of at least 12 months, or can 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).

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 Part 404, Subpart P, Appendix 1 for the 12 month duration? If it does, the applicant is disabled and the evaluation stops. 20 C.F.R. § 416.920(a)(4)(iii).

4. Does the applicant's severe impairment prevent the person from doing previous relevant work? This involves an evaluation of the applicant's residual functional capacity. If the applicant is not prevented from performing previous relevant work, the applicant is not disabled. 20 C.F.R. § 416.920(a)(4)(iv).

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 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 C.F.R. § 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 C.F.R. Part 404, Subpart P, Appendix 2, rules 201.27 - 29.

If such an applicant is not able “to perform a full range of sedentary work” they may be found disabled. 20 C.F.R. Part 404, Subpart P, Appendix 2, § 201.00(h)(3). Additionally, the medical vocation guidelines, located at C.F.R. Part 404, Subpart P, Appendix 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

I. Issue

Was the Division correct when it denied Claimant's August 8, 2011 Interim Assistance application on September 23, 2011?

II. Burden of Proof and Standard of Proof.

Alaska Regulation 7 AAC 40.050(a) expressly provides "[a]ll applicants must "furnish adequate evidence to demonstrate ... eligibility for assistance." More generally, as an applicant for Interim Assistance benefits, Claimant has the burden of proving that he is eligible for the benefits he seeks. *See, State of Alaska Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

The standard of proof in an administrative proceeding is a "preponderance of the evidence," unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, 1183 (Alaska 1986). Therefore, Claimant must prove he is eligible for Interim Assistance by a preponderance of the evidence at each step of the determination of whether or not he is disabled.

III. Claimant Is Unlikely to Be Found Disabled by the Social Security Administration.

Claimant agreed he was found not eligible for Supplemental Security Income (SSI) by the Social Security Administration (SSA) after appealing denial of his eligibility twice. Claimant agreed that he had not pursued further appeal of the SSA's denial, as of the time of the Fair Hearing.

To be eligible for Alaska Interim Assistance, an applicant must be "likely to be found disabled by the Social Security Administration." 7 AAC 40.180(b)(1). The Division's determination it is unlikely Claimant will be found disabled by the Social Security Administration is supported by factual history.

In the Alaska case of *Moore v. Beirne*, 714 P.2d 1284 (Alaska 1986), the Supreme Court analyzed the period during which a recipient of Interim Assistance reasonably could argue that the Social Security Administration might find the individual disabled and therefore continue receiving State benefits. *Moore* made clear that a) failure to appeal a denial by the SSA or b) exhaustion of the appeals process at the federal administrative level each constituted a "final" SSI eligibility decision. Once an individual has been finally denied eligibility for SSI, the State has no obligation to provide interim assistance benefits. *Moore*, at 1286.

In this case, unlike *Moore*, Claimant never has been determined eligible for interim assistance benefits and bears the burden of proving he is eligible for them, which he has not done. *See below*. In addition, Claimant has not appealed the SSA's denials of his application. Therefore, neither the Interim Assistance regulations nor the Alaska Supreme Court precedent of *Morre* provide Claimant basis to receive Interim Assistance.

IV. The Division Correctly Determined Claimant Is Not Eligible For Interim Assistance.

Applications for Interim Assistance are governed by 7 AAC 40.180, which requires that the Division of Public Assistance determine that an applicant appears “likely to be found disabled by the Social Security Administration” in order to be eligible for Interim Assistance benefits. 7 AAC 40.180(b)(1). Otherwise stated, individuals are eligible for interim assistance benefits only if the Division determines the federal Social Security Administration (SSA) likely will find the individual disabled, under federal law, and hence eligible for SSI. The federal SSA applies a five-step sequential evaluation process. 20 C.F.R. § 416.920.

In this case the Division determined that Claimant did not meet the requirements of the Adult Public Assistance program and Medicaid therefore was not entitled to Interim Assistance benefits. The basis for the Division’s determination was detailed by the Medical Reviewer, who evaluated Claimant’s medical information using the SSA’s five-step sequential analytic process, as described briefly in the Principles of Law section of this decision, as follows.

First, the Division determined Claimant was not engaged in substantial gainful activity. Second, the Division determined that Claimant’s medically determinable impairment of lumbar disc protrusion with osteophyte is severe because it significantly impairs Claimant’s ability to do basic work activities.

However at the second step of the SSA evaluation process, the Medical Reviewer asserted that because Claimant’s lumbar disc protrusion with osteophyte had not been a severe medical impairment for at least the past twelve months, and was potentially to be remedied with surgery in the near future, Claimant had not met the 12 month duration requirement.

The only evidence Claimant was diagnosed with lumbar disc protrusion with osteophyte is the notation by Dr. [REDACTED], M.D., on a State form “Preliminary Examination for Interim Assistance” (AD-2 form) completed August 18, 2011. Although Dr. [REDACTED]’s diagnosis states Claimant’s condition may be expected to last more than 12 months, the diagnosis is not a record of medical findings or test results. Also, Claimant was intending corrective surgery shortly after November 15, 2011. *See*, Findings of Fact 7 and 12.

Dr. [REDACTED]’s diagnosis is supported by the results of a July 26, 2011 MRI. The magnetic resonance imaging (MRI) report states:

1. L4-5 small to moderate residual recurrent central disc extrusion with effacement of the left lateral recess and mild left foraminal stenosis.
2. L5-S1 left sided disc protrusion and osteophyte resulting in moderate to severe foraminal stenosis as well as left lateral recess stenosis. Not mentioned above is a small posterior central subligamentous disc extrusion at this level which does not cause any significant canal stenosis. (Ex. 4.10)

Dr. [REDACTED]’s diagnosis perhaps is supported by medical records prepared by Ms. [REDACTED], PA-C, who works with Dr. Dillon. The medical records referencing Claimant’s back problem are scant. *See*, Finding of Fact 9.

The earliest indication of back troubles appears in a medical note made by Ms. [REDACTED] on March 25, 2011 that Claimant has “musculoskeletal symptoms, back pain, body aches.” However, in this same medical note, Ms. [REDACTED] recommends “encouraged increase in outdoor/community activity for mental/physical health.” The month prior Ms. [REDACTED] also recommended Claimant “start doing some type of exercise....” Therefore, Claimant’s back problems as described to Ms. [REDACTED] and as understood by her were not of such nature as to be severely impairing to Claimant.

The next medical record addressing Claimant's back condition appears in a medical note made by Ms. [REDACTED] on June 17, 2011. In this note, Claimant reported he "just woke up with pain" that he experienced for one week. Claimant's gait was reported by Ms. [REDACTED] as observed to be "cautious with a left side limp." Claimant testified Ms. [REDACTED]'s remarks were made from observations she, or her nurse, made while Claimant walked into or out of the office visit, and not from tests. The sole tests of his ambulatory ability reported by Claimant were those done by Ms. [REDACTED] in the form of having Claimant push against her pressure on his foot and leg. *See*, Finding of Fact 10. Claimant was ambulatory without assistance in June 2011.

On September 12, 2011 a medical report references Claimant's pain in his left foot, feeling weaker on his left side and dragging his left foot at times, but does not reference back pain or back problems.

Consequently, Claimant's condition does not meet the 12 month durational requirement of the SSA's third step and he would not be eligible for SSI disability. Therefore, the Division was correct to determine that Claimant did not meet the Adult Public Assistance and Medicaid requirements by providing medical proof that he had a severe impairment that has lasted 12 months or which was expected to last more than 12 months.

V. Claimant's Lumbar Disc Protrusion with Osteophyte Does Not Meet the SSA's Listings of Impairments.

The third step of the SSA five-step sequential evaluation is to determine if an applicant's severe physical impairment meets or medically equals the listing of impairments contained in the Social Security regulations located at 20 C.F.R. Part 404, Subpart P, Appendix 1. Even if Claimant had met the 12 month durational limit as required by 20 C.F.R. § 416.920(a)(4)(ii), Claimant's condition does not meet the listed criteria for an impairment.

The regulation at 20 C.F.R. Part 404, Subpart P, Appendix 1, part 1.04 applies to disorders of the spine. For Claimant to meet or equal a listed impairment he must have one of three sets⁴ of circumstances, any of which "result in compromise of a nerve root (including the cauda equine) or the spinal cord. The Division correctly determined there was no medical evidence of such compromise in Claimant's medical documentation. Moreover, Claimant is able to walk, unassisted by apparatus. Therefore, his lumbar spinal stenosis, as described in the MRI report, does not "result in inability to ambulate effectively...." (See footnote 3)

The Division correctly determined Claimant's medical impairment did not meet a listed impairment in the SSA's Appendix 1 and therefore he was unlikely to be determined disabled by the SSA.

⁴ A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by Sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine) or B. spinal arachnoiditis, confirmed by an operative note.... Or C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on an appropriate medically acceptable imagine, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively as defined in 100B2b.)

VI. The Division Conceded Claimant Cannot Do His Prior Work.

The fourth step of the SSA's five-step sequential evaluation is to determine if Claimant has residual functional capacity to do past relevant work. The Division agreed Claimant was unlikely to be able to work as a cab driver, tow truck operator, or tire changer.

VII. The Division Correctly Determined Claimant Can Do Sedentary Work.

The fifth step in the SSA evaluation is to determine if Claimant can perform other work. *See* 20 C.F.R. § 416.920(a)(4)(v).

Claimant testified he thought he could not lift 10 pounds. *See* Finding of Fact 8 above. He said walks every day for exercise for about one-half hour but cannot sit longer than one-half hour without standing up and stretching. *See* Finding of Fact 8 above. Claimant said the SSA had determined he could do sedentary work such as monitoring security cameras or answering telephone caller's questions. The Division's Medical Reviewer asserted Claimant's upper extremities were unimpaired and that he was able to ambulate. Claimant does his own laundry at a laundromat, steps into and out of an RV several times each day, drives himself where he needs to go, picks up his own mail, shops for his own groceries, and generally is independent at home and in his daily life. Claimant describes his life as spending a great deal of time in sedentary activities, e.g. watching TV, visiting with friends. *See* Finding of Fact 8. There is no medical indication Claimant is impaired so that he cannot do sedentary 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. It involves mainly sitting, with occasional walking and standing. *See* 20 C.F.R. § 416.967(a). Based on this description of sedentary work, Claimant is capable of performing sedentary work.

Claimant is a younger individual (age 39) with a GED, and a work history of skilled or semi skilled work (taxicab driver, tire changer, and tow truck operator). *See* Finding of Fact 3 above. Claimant is capable of sedentary work when compared to the "Medical-Vocational Guidelines" of the SSA found at 20 C.F.R. Part 404, Subpart P, Appendix 2, rule 201.27 - 29. These rules conclude that a "younger individual" (ages 18 - 44) who has a high school diploma or a GED, with skilled or semi skilled work experience, like Claimant, has residual functional capacity to do sedentary work, and is not totally and permanently disabled.

Therefore, the Division was correct to determine the SSA was unlikely to find Claimant disabled.


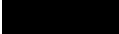
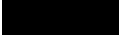
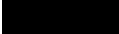

Claimant has not met his burden of proving, by a preponderance of the evidence, that he is eligible for Interim Assistance and did not prove the Division's determination that the Social Security Administration is not likely to find him eligible for disability benefits was incorrect.

CONCLUSIONS OF LAW

I certify that on January 3, 2012, 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, encrypted e-mail on January 4, 2012:

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

/signed/

J. Albert Levitre, Jr., Law Office Assistant I