

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

In the Matter of	)	
	)	OAH No. 13-0458-APA
T H	)	Division No.
_____	)	

**FAIR HEARING DECISION**

**I. Introduction**

T H applied for Interim Assistance on December 13, 2012.<sup>1</sup> A disability adjudicator employed by the Division of Public Assistance (Division) concluded that Mr. H was severely physically impaired, but that he did not qualify for Interim Assistance. The Division notified Mr. H that his application was denied. He requested a hearing.

Mr. H’s hearing was held on June 10, 2013. Mr. H represented himself and testified on his own behalf. Jeff Miller, Public Assistance Analyst with the Division, represented the Division. Jamie Lang, the Division’s disability adjudicator, testified on behalf of the Division. The record was left open after the hearing for Mr. H to submit additional documentary evidence, and for the Division’s written response to that evidence.

This decision concludes that Mr. H is severely physically impaired and that his impairment meets the 12-month durational requirement. However, Mr. H’s physical impairment does not meet or equal the Social Security disability listings. Mr. H does not satisfy the Interim Assistance program’s eligibility requirement that he be “likely to be found disabled by the Social Security Administration.”<sup>2</sup> 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. H is 54 years old.<sup>3</sup> He has a number of medical conditions: chronic major depression, facet syndrome – lumbar, Hepatitis C, hypertension, lumbago (lower back pain), osteoarthritis, peripheral neuropathy, and an umbilical hernia.<sup>4</sup> Mr. H’s back pain is a long-

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<sup>1</sup> Ex. 2.

<sup>2</sup> See 7 AAC 40.180(b)(1).

<sup>3</sup> Ex. 2.

<sup>4</sup> Ex. 3.19.

standing condition.<sup>5</sup> Mr. H has osteoarthritis in all of his major joints. He has degenerative changes in his left shoulder, his right shoulder, and his left knee. He was diagnosed with peripheral neuropathy in both legs in 2009.<sup>6</sup> He experiences pain and numbness in his feet and legs.<sup>7</sup> Mr. H experiences system wide pain.<sup>8</sup> In January 2013, he could walk up to a half mile.<sup>9</sup> At hearing, he estimated that he could walk up to a quarter mile, but that some days he could hardly walk at all due to pain.<sup>10</sup> There is no evidence in the record showing that he requires either two canes or a walker to walk.

There are no psychological evaluations in the record. There is no indication in the medical records that he currently experiences significant depressive symptoms. There is no indication in the medical records that he is experiencing complications from Hepatitis C. There is also no indication in the medical records that his hernia is causing severe problems.

Mr. H was examined by Sean Taylor, MD in late December 2012. Dr. Taylor completed and signed a “Preliminary Examination for Interim Assistance” form on January 7, 2013. That form indicates that Mr. H’s diagnosis was Axonal Peripheral Neuropathy and he was not expected to recover from the condition.<sup>11</sup> Dr. Taylor’s examination notes provide that Mr. H’s gait is antalgic with a left sided limp, and that he has “pain with any movement of the cervical or lumbar spine.”<sup>12</sup> Dr. Taylor recommended that Mr. H be tested to determine if he had either rheumatological or thyroid disease.<sup>13</sup> Mr. H was tested for rheumatoid arthritis, which came back positive for the rheumatoid factor, however, there are no medical records containing a definitive diagnosis or prognosis.<sup>14</sup>

Jamie Lang, the Division’s medical reviewer, determined that Mr. H was not likely to meet the Social Security Administration’s (SSA) disability criteria. She reviewed each of the diagnoses contained in the “Preliminary Examination for Interim Assistance” form to determine whether any of those conditions qualified him as disabled. She concluded that although he was severely impaired by his conditions, he did not meet or equal any of the applicable Social

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<sup>5</sup> See Ex. A (medical examination notes dating back to 2002).

<sup>6</sup> Ex. 3.62.

<sup>7</sup> *Id.*

<sup>8</sup> Ex. 3.150; H testimony.

<sup>9</sup> Ex. 3.122.

<sup>10</sup> H testimony.

<sup>11</sup> Ex. 3.144.

<sup>12</sup> Ex. 3.151.

<sup>13</sup> Ex. 3.153.

<sup>14</sup> Ex. 3.19.

Security disability listing requirements, and that he therefore did not qualify for Interim Assistance.<sup>15</sup> The Division then denied his application for Interim Assistance.

### III. Discussion

#### A. *The Three Step Disability Determination Process*

The Adult Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”<sup>16</sup> Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income (SSI) benefits.<sup>17</sup> Once an applicant is approved for SSI benefits, he or she is then eligible to receive Adult Public Assistance benefits.<sup>18</sup>

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 SSA to approve their SSI application.<sup>19</sup>

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”<sup>20</sup> An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.<sup>21</sup>

The SSA uses a five-step evaluation process in making its disability determinations.<sup>22</sup> Each step is considered in order.<sup>23</sup> The Division uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.<sup>24</sup> The first step looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the applicant is not disabled.<sup>25</sup> If the applicant is not performing “substantial gainful activity,” it is necessary to proceed to step two.

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<sup>15</sup> Exs. 3.1 – 3.2; Lang testimony.

<sup>16</sup> AS 47.25.430.

<sup>17</sup> 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).

<sup>18</sup> 7 AAC 40.030(a); 7 AAC 40.170(a).

<sup>19</sup> 7 AAC 40.170(a) and (b); AS 47.25.455.

<sup>20</sup> 7 AAC 40.180(b)(1).

<sup>21</sup> 2 AAC 64.290(e).

<sup>22</sup> 20 C.F.R. § 416.920.

<sup>23</sup> Under the SSA disability determination process, an applicant who satisfies both steps one and two goes on to step three. An applicant who does not satisfy step three goes on to step four and possibly step five. 20 C.F.R. § 416.920(a)(4).

<sup>24</sup> *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.

<sup>25</sup> 20 C.F.R. § 416.920(a)(4)(i).

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.<sup>26</sup> In order to be considered disabled, the impairment or combination of impairments must be severe,<sup>27</sup> must be expected to result in death, or must have lasted or be expected to last at least 12 months.<sup>28</sup> 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, Subpart P, Appendix 1, as revised as of April 1, 2005, and adopted by reference."<sup>29</sup> If an applicant's impairment meets or equals one of the applicable SSA disability listings, the applicant is disabled<sup>30</sup> 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.<sup>31</sup>

### ***B. Application of the Three Step Process***

The Division's decision to deny Mr. H's application was based upon the review by Jamie Lang, its medical reviewer. She determined that Mr. H was not working and satisfied step one of the Social Security disability analysis. She determined that Mr. H's also satisfied step two of the Social Security disability analysis (his conditions caused him to be severely impaired and had lasted or were expected to last for at least 12 months). She, however, determined that his conditions did not satisfy step three because they did not meet or equal the appropriate disability listings.

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<sup>26</sup> 20 C.F.R. § 416.908.

<sup>27</sup> 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).

<sup>28</sup> 20 C.F.R. § 416.920(a)(4)(ii); 20 C.F.R. § 416.909.

<sup>29</sup> 7 AAC 40.180(b)(1)(B). The SSA disability listings are located at 20 C.F.R. Part 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>

<sup>30</sup> 20 C.F.R. § 416.920(a)(4)(iii) and (d).

<sup>31</sup> *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.

Mr. H has a variety of diagnoses. Because there is insufficient medical evidence regarding his umbilical hernia, depression, or Hepatitis C to determine that those conditions meet or equal the applicable SSA disability listings, those conditions will not be examined further. There is also no evidence that his hypertension is acute. His remaining diagnoses are peripheral neuropathy and musculoskeletal disorders (osteoarthritis, lumbago, lumbar facet disease).

1. Peripheral Neuropathy

Mr. H's specific diagnosis is Axonal Peripheral Neuropathy. This condition is classified under SSA disability listing 11.14 "Peripheral Neuropathies."<sup>32</sup> In order for Mr. H to meet or equal this listing, he would need to have "*Persistent disorganization of motor function* in the form of paresis or paralysis, tremor or other involuntary movements . . . The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands, and arms."<sup>33</sup> (Emphasis in original). The evidence shows that Mr. H experiences a great deal of pain and some numbness. His ability to walk is affected by his pain. However, there is no evidence demonstrating that he experiences "paresis or paralysis, tremor or other involuntary movements." As a result, he does not meet or equal the SSA disability listing due to his Axonal Peripheral Neuropathy.

2. Musculoskeletal Disorders

Mr. H has a fair number of musculoskeletal disorders. He has osteoarthritis in all his major joints. He has facet syndrome-lumbar. He has lumbago (lower back pain). His shoulders, back, and left knee are all affected. With regard to his back issues, there is no evidence showing that he has a "compromise of the nerve root (including the cauda equina) or the spinal cord."<sup>34</sup> As a result, he does not meet or equal the applicable SSA disability listing due to his back pain.

His remaining musculoskeletal issues fall within the SSA disability listing for major dysfunction of joints: "chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s)."<sup>35</sup> However, in order to meet or equal the applicable listing, he would need to be unable to "perform fine and gross movements effectively" in both upper extremities, be unable to walk without the use of a walker or two crutches or two canes, or

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<sup>32</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1, § 11.14.

<sup>33</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1, §§ 11.00C, 11.04B, and 11.14.

<sup>34</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.04.

<sup>35</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.02.

be unable “to walk a block at a reasonable pace on rough or uneven surfaces.”<sup>36</sup> There is no evidence in the record that he is unable to use both upper extremities. The evidence most favorable to Mr. H regarding his ability to walk is his own testimony, which is that he can walk a quarter mile. While there would have to be medical evidence showing an inability to walk in order to meet or equal the listing, Mr. H’s testimony shows that there is some limitation in his ability to walk. However, absent medical evidence showing either that Mr. H is unable to use both upper extremities or is unable to walk, he does not meet or equal the applicable SSA disability listing.<sup>37</sup>

#### **IV. Conclusion**

Mr. H has a number of long-term physical conditions which cause him pain and limit his physical functioning. He, however, had the burden of proof. He did not meet it because he did not show that any of these conditions met or equaled the applicable SSA disability listing, a requirement for Interim Assistance eligibility. As a result, the Division’s decision to deny his application for Interim Assistance benefits is **AFFIRMED**.

DATED this 9<sup>th</sup> day of August, 2013.

Signed  
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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 23<sup>rd</sup> day of August, 2013.

By: Signed  
\_\_\_\_\_  
Name: Lawrence A. Pederson  
Title: Administrative Law Judge

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

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<sup>36</sup> 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.00B2b and c; § 1.02A and B.

<sup>37</sup> Dr. Taylor’s examination notes recommended that Mr. H pursue a field “which would only have a sedentary strength demand and would not require any significant amount of walking.” (Ex. 3.153) In other words, Mr. H is capable of walking, but not for extended distances or periods of time.