

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

In the Matter of)	
)	OAH No. 13-0503-APA
K N)	Division No.
_____)	

FAIR HEARING DECISION

I. Introduction

K N applied for Interim Assistance on February 14, 2013.¹ A disability adjudicator employed by the Division of Public Assistance (Division) concluded that Ms. N did not qualify for Interim Assistance. The Division notified Ms. N that her application was denied. She requested a hearing.

Ms. N’s hearing was held on May 10, 2013. Ms. N represented herself and testified on her own behalf. W E, Ms. N’s husband, also participated in the hearing and testified on Ms. N’s behalf. Jeff Miller, Public Assistance Analyst with the Division, represented the Division. Jamie Lang, a Division Disability Adjudicator, testified on behalf of the Division. The record was held open after the hearing for Ms. N to submit additional medical records, and for the Division’s written response.²

This decision concludes that Ms. N does not have a severe impairment, as defined by Social Security Administration rules. As a result, Ms. N does not satisfy the Interim Assistance program’s eligibility requirement that she be “likely to be found disabled by the Social Security Administration.”³ The Division’s decision denying her Interim Assistance application is affirmed.

II. Facts

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

In September 2011, Ms. N experienced “very localized numbness to the face and gums on the left. She also has intermittent numbness to the thumb, index, and long finger of her left

¹ Ex. 2.

² The record closed on June 7, 2013. On June 10, 2013, Ms. N submitted an additional document, being a letter dated June 8, 2013, from the Alaska Mental Health Consumer Web. That letter did not contain any new medical information, and was not considered in arriving at this decision.

³ See 7 AAC 40.180(b)(1).

side.”⁴ A CAT scan resulted in no abnormal findings.⁵ In late 2011, Ms. N had an abnormal MRI which showed “acute demyelinating process.”⁶ She was diagnosed with acute demyelination disease in March 2012; it was unclear whether it was multiple sclerosis.⁷ She had an MRI three months after her 2011 MRI, which showed “resolution.”⁸ She had another MRI, from June 2012, which was normal.⁹

The “Preliminary Examination for Interim Assistance” form was completed by Dr. Salamon on March 11, 2013. Dr. Salamon responded to the question “[w]hat is the applicant’s diagnosis?” with “[c]onsidered multiple sclerosis.” He further stated that Ms. N was not expected to recover from the condition, but that the “[d]iagnosis needs to be further clarified, needs evaluation by neurology.”¹⁰

On March 31, 2013, Ms. N went to the Providence Emergency Department with complaints of bilateral hand numbness, fever, and chills. The Emergency Department physician observed her hands turning blue and suspected Raynaud’s¹¹ disease.¹²

On April 3, 2013, Ms. N became unconscious after smoking marijuana, and was taken to the hospital.¹³ A brain MRI was performed on April 4, 2013, which concluded: “[t]here is no MR explanation for altered level of consciousness and no findings suggesting multiple sclerosis.”¹⁴ An EEG was performed on April 23, 2013, which was a “normal awake and sleep EEG.”¹⁵ Her most recent medical examination notes, dated April 17, 2013, state that “[h]er clinical status right now is very mild, she is able to get around easily and has very little evidence of any acute processes.”¹⁶

Jamie Lang, the Division’s medical reviewer, determined that Ms. N was not likely to meet the Social Security Administration’s (SSA) disability criteria based upon her medical

⁴ Ex. 3.98.

⁵ Exs. 3.97 – 3.98, 3.108.

⁶ Ex. 3.117.

⁷ Ex. 3.143.

⁸ Ex. 3.117. *Also see* CD of Providence Hospital Records, pp. 172 – 173, for comparison of December 24, 2011 MRI with March 12, 2012 MRI.

⁹ Exs. 3.82, 3.117.

¹⁰ Ex. 3.150.

¹¹ Raynaud’s disease or syndrome is a “circulatory disorder that affects the hands and feet, caused by insufficient blood supply to these parts, and resulting in cyanosis, numbness, pain, and, in extreme cases, gangrene.” *The American Heritage Stedman’s Medical Dictionary* 705 (Houghton Mifflin 2002).

¹² Ex.. 3.73.

¹³ Ex. B, pp. 2 – 4.

¹⁴ Ex. B, pp. 50 – 51.

¹⁵ Ex. A, p. 4.

¹⁶ Ex. A, p. 3.

conditions.¹⁷ She concluded that Ms. N did not satisfy the second step of the SSA disability analysis because she did not have a severe impairment.

Ms. Lang took the additional step of determining whether Ms. N's condition met or equaled the SSI disability listing for Multiple Sclerosis, and concluded that it did not.¹⁸ The Division denied Ms. N's application for Interim Assistance.¹⁹

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].”²⁰ Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income (SSI) benefits.²¹ Once an applicant is approved for SSI benefits, he or she is then eligible to receive Adult Public Assistance benefits.²²

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.²³ In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”²⁴ An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.²⁵

The SSA uses a five-step evaluation process in making its disability determinations.²⁶ 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.²⁷

The Division uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.²⁸ The first step looks at the applicant's current work activity. If the applicant is performing “substantial gainful activity,” the

¹⁷ Ex. 3.3; Lang testimony.

¹⁸ Exs. 3.2 – 3.4; Lang testimony.

¹⁹ Ex. 4.

²⁰ AS 47.25.430.

²¹ 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).

²² 7 AAC 40.030(a); 7 AAC 40.170(a).

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

²⁴ 7 AAC 40.180(b)(1).

²⁵ 2 AAC 64.290(e).

²⁶ 20 C.F.R. § 416.920.

²⁷ 20 C.F.R. § 416.920(a)(4).

²⁸ *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.

applicant is not disabled.²⁹ 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.³⁰ In order to be considered disabled, the impairment or combination of impairments must be severe and must be expected to result in death or must have lasted or be expected to last at least 12 months.³¹ A severe impairment is one that “significantly limits [a person’s] physical or mental ability to do basic work activities.”³² 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.”³³ If an applicant’s impairment meets or equals one of the applicable SSA disability listings, the applicant is disabled³⁴ 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.³⁵

B. Application of the Three Step Process

The Division’s decision to deny Ms. N’s application was based on the review by Jamie Lang, its medical reviewer. She determined that Ms. N satisfied step one of the SSI disability

²⁹ 20 C.F.R. § 416.920(a)(4)(i).

³⁰ 20 C.F.R. § 416.908.

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

³² 20 C.F.R. § 416.920(c).

³³ 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>

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

³⁵ *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.

review process. She concluded, however, that Ms. N did not satisfy step two because her impairment was not severe.³⁶

The medical evidence in the record supports the Division's conclusion that Ms. N does not have a severe impairment. She had a diagnosis of Multiple Sclerosis, which needed to be confirmed. It was based on an abnormal late 2011 brain MRI. However, she had three subsequent brain MRIs (March 2012, June 2012, and April 2013), none of which were abnormal. Her most recent EEG, in late April 2013, was normal. The record is devoid of any medical evidence which would support a factual finding that her impairment, which is suspected of being Multiple Sclerosis, significantly limits her mental or physical ability to "perform basic work activities" at the present time. In fact, her most recent medical examination notes, dated April 17, 2013, state that "[h]er clinical status right now is very mild, she is able to get around easily and has very little evidence of any acute processes."³⁷ As a result, Ms. N has not met her burden of proof and shown that she satisfies step two of the SSI disability review process.

IV. Conclusion

There is insufficient medical evidence in the record to support a finding that Ms. N's medical condition, which is suspected of being Multiple Sclerosis, is a severe impairment, *i.e.*, one that significantly limits her ability to perform basic work activities. As a result, Ms. N did not meet her burden of proving that she is likely to be found disabled by the Social Security Administration. The Division's decision to deny her application for Interim Assistance benefits is affirmed.

DATED this 13th day of June, 2013.

Signed

Lawrence A. Pederson
Administrative Law Judge

³⁶ While there is medical evidence in the record that Ms. N experiences gynecological problems, frequent kidney infections, and has Raynaud's disease, these were not listed as disabling conditions on the "Preliminary Examination for Interim Assistance" form, and there is no indication in the record that these conditions affect Ms. N's ability to perform basic work activities. Accordingly, they will not be addressed further.

³⁷ Ex. A, p. 3.

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 27th 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.]