

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

In the Matter of)	
)	OAH No. 13-0683-APA
M D)	Division No.
_____)	

FAIR HEARING DECISION

I. Introduction

M D applied for Interim Assistance on February 12, 2013.¹ A disability adjudicator employed by the Division of Public Assistance (Division) concluded that Mr. D was severely physically impaired but that he did not qualify for Interim Assistance. The Division notified Mr. D that his application was denied. He requested a hearing.

Mr. D’s hearing was held on June 26, 2013. Mr. D represented himself and testified on his own behalf. G C, Mr. D’s caseworker at Anchorage Community Health Services (ACMHS), assisted Mr. D at the hearing and testified on his behalf. Terri Gagne, Public Assistance Analyst with the Division, represented the Division. Jamie Lang, the Division’s disability adjudicator, testified on behalf of the Division.

This decision concludes that Mr. D is severely physically impaired and that his impairment meets the 12-month durational requirement. However, Mr. D’s physical impairments do not meet or equal the Social Security disability listings. Mr. D also has mental health diagnoses which also did not meet or equal the Social Security disability listings. Mr. D 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. D is 52 years old with a substantial medical history.³ He has severe degenerative disk disease with spondylosis, osteoarthritis, and facet osteoarthritis of the cervical spine.⁴ He

¹ Ex. 2.

² See 7 AAC 40.180(b)(1).

³ Mr. D’s medical records for this case consist of slightly over 1400 pages covering the time period from 2011 through the spring of 2013.

⁴ Ex. 2.2-86 (CT from September 15, 2012); Ex. 2.145 (CT from January 20, 2013).

has degenerative changes of the thoracic spine.⁵ He has stable degenerative changes of his lumbosacral spine.⁶

Mr. D has a Baker's cyst in his right knee,⁷ and possible patellar tendonitis in his right knee.⁸ Recent medical examination notes state that he is able to walk.⁹ Mr. D estimated that he could walk for approximately 20 minutes, but that would result in severe pain. He does not use a cane or a walker for assistance, but does have a knee brace.¹⁰

Mr. D has also been diagnosed with a seizure disorder, for which he has been prescribed Keppra.¹¹ As of his June 2013 hearing, he had not had a seizure in over a year.¹²

Mr. D has severe radiocarpal and distal radial ulnar joint osteoarthritis in his left hand.¹³ The hand is painful and he has limited use of it.¹⁴ He has been diagnosed with complex regional pain syndrome in his left hand.¹⁵ He also has moderate arthritis in his right shoulder and mild degenerative changes in his left elbow.¹⁶

There are no recent psychological evaluations in the record. There is a summary of a neuropsychological evaluation conducted when Mr. D was 45, *i.e.* approximately seven years ago, which indicates that Mr. D has mild depression and "significant personality disorder symptoms."¹⁷ Mr. D was recently seen by a mental health clinician at ACMHS, who diagnosed him with histrionic personality disorder; he does not have a recent diagnosis for depression.¹⁸ Mr. D also experiences prolonged periods of insomnia.¹⁹

⁵ Ex. 2.2-322 (X-Ray from January 11, 2013).

⁶ Ex. 2.2-332 (X-Ray from August 31, 2012).

⁷ Ex. 2.2-312 (MRI from March 18, 2013).

⁸ Ex. 2.2-343 (Medical Examination notes from March 14, 2013).

⁹ Ex. 2.2-468 (Alaska Native Medical Center February 3, 2013); Ex. 2.2-169 (Providence February 11, 2013); Ex. 2.2-192 (Anchorage Neighborhood Health Center "No physical disability", "Gait And Stance: Normal." February 25, 2013).

¹⁰ D testimony.

¹¹ There is some ambiguity in the record regarding whether Mr. D has a seizure disorder. For instance, Alaska Native Medical Center summary notes state that Mr. D had a normal EEG and brain MRI in January 2012, and that the Neurology department opined his seizure activity was due to medications and lack of sleep and he did not have a seizure disorder. *See* Ex. 2.2-1254.

¹² D testimony.

¹³ Ex. 2.2-121 (X-Ray from December 27, 2012).

¹⁴ D testimony.

¹⁵ Ex. 2.2-84.

¹⁶ Exs. 2.2-27 – 2.2-29 (Diagnostic imaging studies from December 30, 2012).

¹⁷ Ex. 2.2-1251.

¹⁸ C testimony.

¹⁹ D testimony.

Mr. D’s application for assistance was supported by a March 6, 2013 “Preliminary Examination for Interim Assistance” form. That form stated his diagnoses were complex regional pain syndrome of the left hand, depression, right knee pain, chronic back and neck pain, seizure disorder, and insomnia. The form stated he was not expected to recover from these conditions.²⁰

Jamie Lang, the Division’s medical reviewer, determined that Mr. D 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 Security disability listing requirements, and that he therefore did not qualify for Interim Assistance.²¹ The Division then denied his application for Interim Assistance.

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].”²² Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income (SSI) benefits.²³ Once an applicant is approved for SSI benefits, he or she is then eligible to receive Adult Public Assistance benefits.²⁴

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.²⁵

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”²⁶ An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.²⁷

²⁰ Ex. 2.2-302.

²¹ Exs. 2.1a – 2.1g; Ex. 2.1; Lang testimony.

²² AS 47.25.430.

²³ 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).

²⁴ 7 AAC 40.030(a); 7 AAC 40.170(a).

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

²⁶ 7 AAC 40.180(b)(1).

²⁷ 2 AAC 64.290(e).

The SSA uses a five-step evaluation process in making its disability determinations.²⁸ Each step is considered in order.²⁹ The Division uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.³⁰ The first step looks at the applicant's current work activity. If the applicant is performing "substantial gainful activity," the applicant is not disabled.³¹ 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.³² In order to be considered disabled, the impairment or combination of impairments must be severe,³³ must be expected to result in death, or must have lasted or be expected to last at least 12 months.³⁴ 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."³⁵ If an applicant's impairment meets or equals one of the applicable SSA disability listings, the

²⁸ 20 C.F.R. § 416.920.

²⁹ 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).

³⁰ *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.

³¹ 20 C.F.R. § 416.920(a)(4)(i).

³² 20 C.F.R. § 416.908.

³³ 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).

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

³⁵ 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>

applicant is disabled³⁶ 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.³⁷

B. Application of the Three Step Process

The Division's decision to deny Mr. D's application was based upon the review by Jamie Lang, its medical reviewer. She determined that Mr. D was not working and satisfied step one of the Social Security disability analysis. She determined that Mr. D'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.

Mr. D has a variety of diagnoses: complex regional pain syndrome of the left hand, depression, right knee pain, chronic back and neck pain, seizure disorder, and insomnia. The complex regional pain syndrome, right knee pain, and chronic back and neck pain all fall under the Social Security musculoskeletal disability listing. The seizure disorder falls under the Social Security epilepsy disability listing. The depression falls under the Social Security affective disorders listing. There is no disability listing for insomnia.

1. Musculoskeletal Disorders

Mr. D undoubtedly has neck and back pain issues, which would fall under the general category of musculoskeletal disorders and the specific disability listing for disorders of the spine. That specific disability listing requires that Mr. D have a "compromise of a nerve root (including the cauda equina) or the spinal cord" along with other criteria.³⁸ The record shows that he has degenerative disk disease of the spine, osteoarthritis, and facet osteoarthritis of the cervical spine. He has degenerative changes in both the lumbar and lumbosacral spine. However, the medical evidence does not state that his nerve roots, cauda equina,³⁹ or spinal cord are compromised, nor does it contain sufficient information from which compromise can be inferred. The evidence also shows that he is able to walk without using an assistive device, albeit with pain.

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

³⁷ *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.

³⁸ 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.04.

³⁹ The cauda equina is "the collection of spinal roots that descend from the lower part of the spinal cord and occupy the vertebral canal below the cord." *Dorland's Illustrated Medical Dictionary* 313 (31st Ed., 2007).

Regardless of Mr. D's pain issues, in order to meet or equal the specific SSA disability listing for the spine, there must be medical evidence showing that his nerve roots, cauda equina, or spinal cord were compromised.⁴⁰ As noted above, there is no medical evidence in the record showing compromise of his nerve roots, cauda equina, or spinal cord. Without that showing, he does not meet the listing, regardless of his pain levels and how they affect his physical activities. Mr. D therefore does not meet or equal the specific listing for disorders of the spine. As a result, his spinal/neck/back pain issues do not satisfy step three of the SSA disability determination process, which means he does not qualify for Interim Assistance benefits based upon his spinal condition.

Mr. D also experiences right knee pain. This again falls under the general musculoskeletal disability listing category. The specific listing is for "major dysfunction of a joint."⁴¹ He has a Baker's cyst and uses a knee brace. However, he is able to walk, without using a cane or other assistive device. He can walk for approximately 20 minutes. In order for his knee condition to meet or equal the applicable listing, he would need to be unable to walk without the use of a walker or two crutches or two canes, or be unable "to walk a block at a reasonable pace on rough or uneven surfaces."⁴² Mr. D's ability to walk for approximately 20 minutes, without the use of any assistance devices, does not meet the listing requirement. His right knee pain/Baker's cyst, therefore, does not qualify him for Interim Assistance benefits.

Mr. D's complex regional pain syndrome, osteoarthritis, and difficulty in using his left hand also comes under the listing for "major dysfunction of a joint." His left elbow degenerative changes and his right shoulder arthritis also fall under the same listing. Right shoulder and left elbow/hand are both upper extremities. The listing section, however, requires that both upper extremities be involved to the point that he cannot "perform fine and gross movements effectively" in each upper extremity.⁴³ While Mr. D has arthritis in his right shoulder, there is no evidence that he is unable to use his right upper extremity. His primary impairment is with

⁴⁰ 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.04(C).

⁴¹ 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.02.

⁴² 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.00B2b, § 1.02A.

⁴³ 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.00B2c, § 1.02B..

regard to his left upper extremity.⁴⁴ Because there is no evidence demonstrating that he not able to use both of his upper extremities, he does not meet the listing requirement.

2. Seizure Disorder

Seizure disorders come the under the SSA disability listing for epilepsy. The listing requires that there be some evidence of a persistent seizure disorder, with seizures occurring more than once a month, despite treatment.⁴⁵ Mr. D testified that he has not had a seizure in more than a year. Mr. D does not satisfy the threshold requirements for meeting or equaling this listing.

3. Depression

Mr. D's preliminary examination form states that he has a diagnosis of depression. Depression falls under the SSA disability listing for affective disorders.⁴⁶ However, the only reference to Mr. D's depression, other than the diagnosis statement contained in his preliminary examination form, is a summary statement which refers to a neuropsychological evaluation conducted when he was 45, which stated he had mild depression.⁴⁷ He has no current depression diagnosis, but instead has one for histrionic personality disorder. There is a dearth of evidence on his mental condition, its severity, and how it affects his day to day functioning.

The SSA disability listing requires an evaluation of symptoms and severity. It requires "medical evidence consisting of symptoms, signs, and laboratory findings (including psychological test findings)."⁴⁸ There is insufficient evidence to support a finding that Mr. D is depressed and that his depression is severe enough to meet to equal the SSA disability listing.

There is also an SSA disability listing for Personality Disorders, which would include Mr. D's diagnosed histrionic personality disorder.⁴⁹ However, there is no medical evidence regarding this condition. Consequently, there is no evidence to support a finding that he meets or equals the SSA disability listing.

⁴⁴ This decision does not find that Mr. D is unable to use his left upper extremity. The evidence shows that he experiences pain and impaired functioning, but does not show that he is unable to perform "fine and gross movements effectively."

⁴⁵ See 20 C.F.R. Part 404, Subpart P, Appendix 1, § 11.02.

⁴⁶ 20 C.F.R. Part 404, Subpart P, App. 1, § 12.04.

⁴⁷ Ex. 2.2-1251.

⁴⁸ 20 C.F.R. Part 404, Subpart P, App. 1, § 12.00B, C, and D.

⁴⁹ 20 C.F.R. Part 404, Subpart P, App. 1, § 12.08.

4. Insomnia

The SSA disability listings do not contain a specific listing for insomnia. Insomnia may be a factor to be taken into account when determining whether an applicant meets or equals another listing. For instance, sleep disturbance is a factor that is taken into account in the SSI disability listing for affective disorders.⁵⁰ Regardless, insomnia in and of itself is not considered a disabling condition and would not qualify Mr. D for disability.

IV. Conclusion

Mr. D 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. He similarly failed to meet his burden of proof with regard to mental disorders. As a result, the Division's decision to deny his application for Interim Assistance benefits is AFFIRMED.

DATED this 2nd day of August, 2013.

Signed

Lawrence A. Pederson
Administrative Law Judge

⁵⁰ 20 C.F.R. Part 404, Subpart P, App. 1, § 12.04A.

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 30th day of August, 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.]