

pain, dizziness, and headaches.⁶ These illnesses and symptoms are common in her family, but she has taken care of herself, and staved off debilitation longer than other members of her family.⁷ Over the last several years, however, her condition has worsened, and it has affected her ability to hold a job.⁸

Ms. N's self-reported work history indicates that she took job with the state in February 2012.⁹ She described her work as accounting, and her basic duties included using a computer, a fax, and a copier.¹⁰ She testified, however, that she was not offered this job on a permanent basis, and was let go at the end of the probation period for the job.¹¹ Her last day of work was October 15, 2012.¹² In her view, she lost this job because her co-workers were frustrated that she moved so slowly.¹³ She also testified that although she is capable of doing some typing, she cannot type for sustained lengths of time.¹⁴

On November 26, 2012, Ms. N applied for Supplemental Security Income (SSI) from the Social Security Administration, on the basis that her disability made her eligible for SSI.¹⁵ Her application was denied on March 29, 2013.¹⁶ She appealed that denial on April 2, 2013.¹⁷

On April 26, 2013, Ms. N applied for Adult Public Assistance, aid to the permanently and totally disabled under 7 AAC 40.170, which is a state program that provides assistance to disabled state residents.¹⁸ Adult Public Assistance is available if an applicant has been found by the Social Security Administration to meet the definition of disabled for purposes of receiving SSI.¹⁹ Because the social security process upon which Adult Public Assistance depends can take a very long time, Ms. N also applied for Interim Assistance, which, if approved, would provide her with a small monthly cash payment while awaiting a final decision on her Adult Public Assistance.²⁰ The Division of Public Assistance will grant Interim Assistance if it determines

⁶ See, e.g., Division Exhibits 2.102, 2.108, 2.116, 2.120; N Exhibit.

⁷ N testimony. See also, e.g., Division Exhibit 2.102 (citing family member with Sjögren's Syndrome).

⁸ *Id.*

⁹ Division Exhibit 2.191

¹⁰ *Id.*

¹¹ N testimony.

¹² Division Exhibit 2.0.

¹³ N testimony.

¹⁴ N testimony.

¹⁵ Division Exhibit 2.1, 2.2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Division Exhibit 1.

¹⁹ 7 AAC 40.170(a).

²⁰ Division Exhibit 2.0. See AS 47.25.455.

that an individual is likely to be found disabled by the Social Security Agency.²¹

Ms. N's application for Interim Assistance was referred to Jamie Lang, who is an Interim Assistance Medical Reviewer with the Division.²² Ms. Lang compared each of Ms. N's diagnoses to the listings in the current version of the Social Security Administration's Bluebook for disability evaluation.²³ She concluded that "[a]lthough the applicant does have severe impairments, she does not meet or equal any of the SSA Blue Book listings. Thus, Interim Assistance benefits are not recommended at this time."²⁴

Based on the action of the Social Security Agency in denying SSI and Ms. Lang's recommendation, on June 5, 2013, the Division denied Ms. N's applications for Adult Public Assistance and Interim Assistance.²⁵ On June 7, 2013, Ms. N appealed the denial of Interim Assistance and requested a fair hearing.²⁶ A telephonic hearing was held on July 10, 2013. Ms. N represented herself, and presented exhibits and testified at the hearing. Terri Gagne represented the Division, and Ms. Lang testified on behalf of the Division.

III. Discussion

At the hearing, Ms. N argued that she was disabled. She clearly has impairments, which she believes caused her to lose her job. She presented new evidence, in the form of two letters from two different doctors, and she argued that this evidence shows she is disabled. Therefore, in her view, she should be found eligible for Interim Assistance.

Yet, the Division must apply Social Security's definition of disability, and under the Social Security regulations, the disability must be very severe for the applicant to qualify. Social Security's disability criteria are found in its listing of impairments, which is called "Appendix 1."²⁷ The 2005 version of Appendix 1 is part of Alaska law under the Department's disability regulation.²⁸

²¹ 7 AAC 40.180(b)(1).

²² Division Exhibit 2.2.

²³ Division Exhibit 2.2 (citing <http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>).

²⁴ Division Exhibit 2.2h.

²⁵ Division Exhibit 2.211.

²⁶ Division Exhibit 2.212.

²⁷ The Division applies the first three steps of Social Security Agency's five-step disability analysis in 20 C.F.R. § 416.920. *In re M.H.*, OAH No. 12-0688-APA (Comm'r Health and Soc. Serv. 2012). Here, the Division agrees that Ms. N meets steps one and two, so the analysis is under step three, which asks whether an impairment meets or equals the listing in Appendix 1. *Cf., e.g., In re XX*, OAH No. 13-0481-APA (Comm'r Health and Soc. Serv. 2013) (finding that applicant was not likely to be found disabled by SSA because applicant did not show the level of impairment required under Appendix 1).

²⁸ 7 AAC 40.180(c)(4).

For Ms. N’s impairments, the analysis required in Appendix 1 turns largely on whether the applicant has experienced loss of function. The symptoms and loss of function necessary to qualify as disabled under the listings related to Ms. N’s impairments are formidable. For example in the section on immune system disorders—the most important section here, because it includes Ms. N’s rheumatoid and inflammatory arthritis—Paragraph A of section 14.09 of Appendix 1 describes the impairments and necessary loss of function as follows:

A. History of joint pain, swelling, and tenderness, and signs on current physical examination of joint inflammation or deformity in two or more major joints resulting in inability to ambulate effectively or inability to perform fine and gross movements effectively, as defined in 14.00B6b and 1.00B2b and B2c.²⁹

If an applicant does not meet Paragraph A, Paragraph D of section 14.09 provides an alternative route, which also establishes a very high threshold of severity:

D. Inflammatory arthritis, with signs of peripheral joint inflammation on current examination, but with lesser joint involvement than in A and lesser extra-articular features than in C, and: 1. Significant, documented constitutional symptoms and signs (e.g., fatigue, fever, malaise, weight loss), and 2. Involvement of two or more organs/body systems (see 14.00B6d). At least one of the organs/body systems must be involved to at least a moderate level of severity.³⁰

Ms. N does not meet the joint deformity requirement of Paragraph A or the organ involvement requirement of D. The medical evidence, examined in detail by Ms. Lang, shows that Ms. N is in pain, has some swelling in some joints, and has some nodules on her wrist.³¹ She does not, however, have significant joint changes or deformities.

And Ms. N’s symptoms do not meet the definition of fine and gross movements deficiency. This definition requires “an extreme loss of function of both upper extremities.”³² Examples would include “the inability to prepare a simple meal and feed oneself” or “the inability to take of personal hygiene.”³³ At the hearing, Ms. N testified that she was capable of

²⁹ 20 C.F.R. Pt. 404, subpart P, appendix 1 § 14.09A. at 494 (2005). Paragraphs B. and C. of section 14.09 also describe alternative disabling conditions caused by inflammatory arthritis or related conditions, but Ms. N would not meet the requirements these paragraphs. *Id.* at §§ 14.09B.; 14.09C.

³⁰ *Id.* at § 14.09D.

³¹ Division Exhibit 2.2c (citing Exhibits 2.86, 2.72, 2.56, 2.25).

³² 20 C.F.R. Pt. 404, subpart P, appendix 1 § 1.00B.2.c. at 441 (2005). This definition is cross referenced by Paragraph 14.09A for immune system disorders, and it directly applies to Musculoskeletal disorders like Carpel Tunnel Syndrome.

³³ *Id.*

preparing a meal and can wash and dress herself.³⁴ The medical evidence, including the new exhibits introduced by Ms. N, show good range of motion in her wrists and elbows.³⁵ Therefore, at this time, based on Ms. N's testimony and the evidence in this record, Ms. N does not experience the loss of function that would meet the level of severity described in the relevant sections of Appendix 1.

The same result is reached whether each impairment is analyzed for being listed in Appendix 1, analyzed for medical equivalency, or aggregated to see if the combined result meets the criteria.³⁶ Here, Ms. Lang's report walks step-by-step through each of Ms. N's impairments, and compares them to the listings in Appendix 1. Ms. Lang found that Dry Eye Syndrome, Xerostomia (dry mouth), Chiari Malformation, and Carpel Tunnel Syndrome are not listed in Appendix 1. She determined that Xerostomia was not equivalent to any listed impairment, and did not analyze it further. For Chiari Malformation and Carpel Tunnel Syndrome, Ms. Lang found comparable listings under which to analyze the impairment, but made specific findings that these impairments do not meet the severity requirements of those listings.³⁷ With regard to Ms. N's Rheumatoid Arthritis, Inflammatory Arthritis, and Sjögren's Syndrome, these illnesses are specifically listed under section 14.00 of Appendix 1, which describes immune system disorders.³⁸ Again, however, Ms. Lang found that Ms. N's impairments did not meet the level of severity required by the Social Security Agency for a finding of disability. Ms. N did not argue that any of Ms. Lang's specific conclusions were in error, and an analysis of Ms. Lang's report shows that each of the conclusions was supported by the record.

A close analysis of the report, however, does reveal one error. Ms. Lang's analysis was based on the current version of Appendix 1, not the 2005 version, which was adopted by

³⁴ N testimony.

³⁵ Division Exhibits 2.50, 2.45; N Exhibit at 2.

³⁶ *Cf.*, e.g., 20 C.F.R. §§ 416.923, 416.925, 416.926 (Social Security regulations requiring that impairment be assessed for inclusion in listing in Appendix 1, medical equivalence to criteria in Appendix 1, and multiple impairment equivalence). These regulations are not incorporated by reference into Alaska law, but they serve as guidance in applying 7 ACC 40.180(b)(1)(B) and its instruction that an applicant must "meet[] . . . (B) Social Security Administration disability criteria for the listings of impairments." The focus on "criteria" in 7 AAC 40.180(b)(1)(B) means that the regulation allows the Division to apply the medical equivalence tests of 20 C.F.R. §§ 416.926 and 416.923. This reading of 7 AAC 40.180 is consistent with how the Division and Ms. Lang applied Alaska law in this case.

³⁷ Division Exhibits 2.2a, 2.2b. Chiari Malformation requires a different comparison than the musculoskeletal or immune system disorders already described, but the medical evidence shows that Ms. N's neurological impairments are stable and do not meet the functional deficits of Appendix 1. *E.g.*, Division Exhibit 2.105, 2.119.

³⁸ 20 C.F.R. Pt. 404, subpart P, appendix 1 § 14.00B.6. at 487-88 (2005).

reference in 7 AAC 40.180(b)(1)(B).³⁹ This was an error, because the Division must follow the Department’s regulations. The current version of Appendix 1 contains information that is not present in the 2005 version. As a result of these changes, the current version is more readable and user-friendly. For purposes of this hearing, however, the relevant substantive provisions are not significantly different.⁴⁰ For example, the functional criteria for what the regulations “mean by inability to perform fine and gross movements effectively”—the most important provision of Appendix 1 for purposes of this decision—are exactly the same in both versions.⁴¹ Therefore, although the Division erred by using the current version of Appendix 1 instead of the 2005 version, the error was harmless because the outcome and the analysis would not be any different under the 2005 version.

An additional issue raised by the exhibits produced by Ms. N is whether Ms. N can “perform any other work, including sedentary work,” which is part of the analysis required under 4 AAC 40.180(c)(4). A recent decision of the Department has explained that in applying this requirement, the Department will not be applying steps four and five of the Social Security Agency’s five-step process.⁴² The decision instructed, however, that the Division must address the question of the applicant’s ability work when the Division determines whether an applicant’s impairment meets the criteria in Appendix 1.⁴³

This case shows that 7 AAC 40.180(c)(4) establishes a functional test. Here, Ms. N submitted two exhibits. The first was a letter from her general practice doctor, stating that “[Ms. N] has rheumatoid arthritis with acutely worsening polyarthralgias.”⁴⁴ The letter went on to conclude that “[s]he is unable to work.”⁴⁵ At the hearing, Ms. Lang was asked to address how this letter affected her analysis and whether a different conclusion might be warranted under the Department’s regulation.

Ms. Lang explained that this first letter was not helpful because it did not address Ms. N’s

³⁹ Lang testimony.

⁴⁰ *Compare* 20 C.F.R. Pt. 404, subpart P, appendix 1 (2005) *with* 20 C.F.R. Pt. 404, subpart P, appendix 1 (2012).

⁴¹ *Compare* 20 C.F.R. Pt. 404, subpart P, appendix 1 § 1.00B.2.c. (2005) *with* 20 C.F.R. Pt. 404, subpart P, appendix 1 § 1.00B.2.c. (2012).

⁴² *In re M.H.*, OAH Case No. 12-0688-APA at 2 (explaining that steps 1-3 of 20 C.F.R. § 416.920 will be applied under 7 AAC 40.180, but not steps 4-5).

⁴³ *Id.* at 2.3 n.5.

⁴⁴ N Exhibit at 1.

⁴⁵ *Id.*

ability to function.⁴⁶ It merely stated a conclusion. Ms. Lang contrasted that approach with the second letter submitted by Ms. N, which was from a specialist at a bone and joint clinic.⁴⁷ This letter described the ability of Ms. N to function.⁴⁸ It noted that although she has musculoskeletal limitations due to joint pain from Rheumatoid Arthritis, she has “full and active” range of motion of both the elbow and the wrist.⁴⁹ It further advised that her “[h]and function is good, but should not include overly repetitive activity which will aggravate the arthritic pain.”⁵⁰ On the question of whether Ms. N could work, the letter advised that “[h]er work will need to be limited to the sedentary level with periodic position changes from sit to stand. Her lifting and carrying is limited to 10 lbs. maximum occasionally.”⁵¹

Ms. Lang testified that the evidence in this second letter was consistent with her analysis of the medical evidence already in the record.⁵² By focusing on the extent to which Ms. N is able to function, which is required by the Department’s regulations and Appendix 1, the Division gave consideration to the question of whether Ms. N was able to perform other work, including sedentary work. The evidence indicated that Ms. N, although impaired and in pain, retains functional capacity above the level that would meet the requirements of Appendix 1. This evidence is sufficient for the Division to conclude that Ms. N could find other work.

Unlike the Social Security process, at the Interim Assistance hearing, Ms. N has the burden of proof regarding whether she could do other work. Here Ms. N did not meet that burden. As described above, the functional analysis in the letters she submitted from her doctors support a finding that she might be able to return to work. And she testified that she has been accepted by the Department of Labor’s Division of Vocational Rehabilitation for vocational rehabilitation services, with the goal of returning her to the workforce.⁵³ Therefore, on this record, the Division correctly concluded that the Social Security Administration is not likely to find Ms. N to be disabled.

IV. Conclusion

Ms. N has many serious impairments, which cause her pain and affect her life. The

⁴⁶ Lang testimony.

⁴⁷ N Exhibit at 2.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Lang testimony.

⁵³ N testimony.

medical evidence, her testimony, and her exhibits, however, do not establish that she has experienced the symptoms and severe loss of function that is required under the standards set by the Social Security Agency for finding her impairments to be disabling. Because the Social Security standards control whether a person is eligible for Interim Assistance, the Division properly found that at this time, and on this record, Ms. N is not eligible for Interim Assistance. The Division's denial of Interim Assistance is affirmed.

DATED this 2nd of August, 2013.

By: Signed
Stephen C. Slotnick
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 10th day of September, 2013.

By: Signed
Name: Stephen C. Slotnick
Title: Administrative Law Judge/DOA

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