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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-09
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Interim Assistance (IA) benefits on April 28, 2010 (Exs. 2.0 – 2.9). The State of Alaska Division of Public Assistance (DPA or Division) denied the Claimant’s application on December 15, 2010 (Ex. 4). The Claimant requested a fair hearing contesting the Division’s denial of her IA application on January 5, 2011 (Ex. 5).

This Office has jurisdiction to resolve this dispute pursuant to 7 AAC 49.010.

The Claimant’s hearing was held as scheduled on February 2, 2011 and March 9, 2011 before Hearing Examiner Jay Durych. The Claimant participated in both hearings by telephone, represented herself, and testified on her own behalf. The Claimant’s friend, [REDACTED], participated in the first hearing by phone and testified on the Claimant’s behalf. The Claimant’s sister, [REDACTED], participated in the second hearing by phone and testified on the Claimant’s behalf. [REDACTED], a Public Assistance Analyst employed by the Division, appeared in person at both hearings and represented and testified on behalf of the Division. [REDACTED], the Division’s Interim Assistance Medical Reviewer, participated in both hearings by phone and testified on behalf of the Division. The parties’ testimonies were received, and all exhibits received from the parties were admitted into evidence. Following the second hearing the record was closed and the case became ripe for decision.

ISSUE

Was the Division correct when, on December 15, 2010, it denied the Claimant’s April 28, 2010 application for Interim Assistance benefits, because the Claimant allegedly did not meet the Interim Assistance Program’s disability requirements?

FINDINGS OF FACT ¹

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

I. Physical Impairments. ²

1. The Claimant's diagnosed physical impairments are diabetes mellitus (insulin dependent, with complications) (Ex. 3.036); congenital heart disease (Ex. 3.049); aortic insufficiency and abnormal EKG (Ex. 3.036); degenerative disk disease (Ex. 3.036); lumbar spinal stenosis (Ex. 26.27); back pain; lumbar and thoracic (Ex. 3.036); right knee pain (Ex. 3.008); fibromyalgia (Ex. 3.049); morbid obesity (Ex. 3.008); hyperlipidemia (Ex. 3.036); hypertension (Ex. 3.008); gastroesophageal reflux disease (GERD) (Ex. 3.008); and Meniere's disease (Ex. 3.036).

For purposes of analysis, the Claimant's diagnosed impairments will be grouped and discussed under four main categories: (A) Diabetes; (B) Congenital Heart Disease / Aortic Insufficiency; (C) Back Pain and Leg Pain - Degenerative and Other Causes; and (D) Vertigo and Related Issues.

A. Diabetes.

2. The Claimant has suffered from insulin-dependent diabetes mellitus for at least nine years (Ex. 26.24; Claimant testimony). She does not have diabetic acidosis. *Id.* However, the Claimant has complained of frequent numbness in her feet and legs at least since October 2005 (Ex. 26.106). A medical report dated September 15, 2010 states that, as of that date, the Claimant's diabetes was "well controlled" but that the Claimant had peripheral neuropathy (Ex. 3.027).

B. Congenital Heart Disease / Aortic Insufficiency.

3. An angiography and heart catheterization was performed on the Claimant on April 1, 2003 (Exs. 24.9 – 24.10). The report summary for the procedure states in relevant part as follows:

(1) Elevated left ventricular and diastolic pressure, otherwise normal left ventricular function. (2) Normal coronary angiography.

4. An echocardiogram was performed on the Claimant on June 29, 2005 (Ex. 26.172). The report summary for the procedure states in relevant part as follows:

(1) There is a mild enlargement of the left atrium with a jet of trivial to mild mitral regurgitation, and there is evidence of left ventricular diastolic dysfunction due to reduced compliance. (2) There are mild sclerotic changes involving the aortic valve

¹ The Claimant's file with the Office of Hearings and Appeals contains approximately 300 pages of medical records and releases. All of these records were reviewed during the preparation of this decision. However, in the interest of brevity, only the most relevant documents are quoted or discussed in this decision.

² Some medical abbreviations used in the medical reports quoted herein have been spelled-out to promote clarity.

with a jet of trivial to mild aortic insufficiency. Left ventricular systolic function appears to be normal.

5. During the hearing of March 9, 2011 the Claimant testified that she had a heart attack within the last several weeks and that, as a result, she was having more trouble walking.

C. Back Pain and Leg Pain - Degenerative and Other Causes.

6. The Claimant has complained of thoracic spinal pain since being injured in a fall in April 2002 (Ex. 26.24), and has sought medical treatment for same since June 2002 (Exs. 26.24 – 26.26, 26.47).

7. The Claimant has herniated disks in her cervical spine at C3, C4, and C5 (Ex. 24.1).

8. In December 2004 the Claimant received a transforaminal epidural steroid injection at C6 for cervical spine pain (Exs. 26.39 – 26.40).

9. The Claimant was involved in a motor vehicle accident in 2005 (Ex. 23.32). In May 2005 the Claimant received a caudal epidural steroid injection for back pain (Exs. 26.34 – 26.35). At that time the Claimant's physician wrote that "she appears to be very debilitated because of the ongoing low back pain" (Ex. 26.21).

10. The Claimant has had weight-bearing pain in her feet, ankles, thighs, hips, and neck, associated with arthritis, since September 2005 or earlier (Ex. 26.119).

11. The Claimant underwent bariatric surgery on October 25, 2005 (Exs. 26.83 – 26.86).

12. The Claimant has complained of generalized pain and was diagnosed with chronic pain syndrome in February 2007 (Ex. 26.68).

13. An MRI of the Claimant's spine, taken on September 25, 2008, showed disk degeneration at L3-4 and L4-5 with associated facet joint disease and with neural foraminal encroachment, and also facet joint disease at L5-S1 (Ex. 26.49).

14. In October 2008 the Claimant received a caudal epidural steroid injection for back pain (Exs. 26.27 – 26.28). At about this time the Claimant reported to her physicians that she had pain in her mid and low back, radiating into both hips, and radiating on the right side all the way down to her leg and foot (Ex. 26.03). She also reported pain in her shoulders at this time (Ex. 26.03).

15. The Claimant has complained to her doctor of right knee pain since approximately November 2009 (Ex. 3.041). The Claimant has used a cane due to her right knee pain, intermittently, since at least June 2010 (Ex. 3.042).

16. On May 28, 2010 the Claimant reported to her doctor that she was having severe pain starting at her right knee and radiating down that leg (Ex. 3.047).

17. A radiology report dated June 1, 2010 states that, as of that date, the Claimant's right knee had a small-to-moderate amount of joint effusion, but was otherwise unremarkable (Ex. 3.045).

18. Radiology reports on the Claimant's right ankle and right hip dated July 21, 2010 were unremarkable (Exs. 3.034, 3.035).

19. The Claimant fell down some stairs in August 2010 (Ex. 3.024). On September 15, 2010 the Claimant reported to her doctor that she had problems walking; that she "could not even walk around Wal-Mart;" that she had problems going up and down stairs; and that she could "not open lids with her hands" (Ex. 3.024).

20. On September 15, 2010 the Claimant reported that she had a burning pain in her outer left calf which radiated up to her left thigh (Ex. 3.024).

21. A report of an MRI of the Claimant's right knee dated October 13, 2010 (Ex. 3.011) states that there was "mild irregularity and signal abnormality of cartilage along the undersurface of the patella," and "minor prepatellar soft tissue edema superficial to the patellar tendon."

22. During the hearing of March 9, 2011 the Claimant testified that although she had previously been using a cane for assistance, she had recently begun using a walker.³

D. Vertigo and Related Issues.

23. The Claimant began experiencing disequilibrium and vertigo in 2003 (Ex. 23.32). On January 27, 2006 she reported to her doctor that she would occasionally experience imbalance, dizziness, and vertigo with occasional attendant nausea and vomiting (Ex. 23.32). The Claimant also complained of tinnitus (in both ears), headaches, trouble with concentration, and short term memory loss (Ex. 23.32). Tests performed on January 31, 2006 indicated probable diagnoses of Transient Ischemic Attack (TIA), Spinocerebellar Disease Unspecified, and Vertigo of Central Origin (Ex. 23.30).

24. Auditory tests performed on February 14, 2006 resulted in a diagnosis of cochlovestibular Meniere's (Meniere's Disease) (Ex. 23.25). Attempts were made to treat the Meniere's using oral medication and injections, but these were largely unsuccessful (Exs. 23.15 – 23.24). The Claimant has some hearing loss (Claimant testimony).

II. Mental Impairments.

25. The Claimant has also been diagnosed with a psychological impairment (Ex. 3.014). The Claimant's psychological impairment may fairly be characterized as depression (categorized under Social Security Administration (SSA) Impairment Listing No. 12.04) *See* Exs. 3.014 – 3.016.

26. A medical report dated October 4, 2010 (Exs. 3.014 - 3.016) states in relevant part that, during the two weeks preceding the report, the Claimant (a) had anhedonia more than half of those days; (b) had a depressed mood almost every day; (c) had sleep disturbances almost every day; (d)

³ This is significant (see discussion in footnote 7, below).

was fatigued almost every day; (e) had appetite changes more than half of those days; (f) engaged in self-accusation nearly every day; (g) had difficulty concentrating more than half of those days; (h) had kinesthetic changes more than half of those days; and (i) had suicidal ideation more than half of those days. The report further stated that this suggested major depression and that the Claimant's functionality was impaired. *Id.*

27. During the hearing of March 9, 2011 the Claimant testified that she was more depressed then, as a result of a recent heart attack, than she had been before, and that she was taking additional anti-depressants (4-5 total); *see also* [REDACTED] testimony.

III. The Claimant's Education and Vocational History.

28. The Claimant was born in 1962 (Ex. 3.049) and was 48 years old at the time the Division denied her application for Interim Assistance benefits in this case.

29. The Claimant has a 9th grade education (Claimant testimony). She has had no vocational training. *Id.* She can understand and speak English well. *Id.* However, she has dyslexia. *Id.* For that reason she cannot read or write English very well. *Id.* She believes that her reading level is at about the second grade level. *Id.*

30. The Claimant has worked since the age of 14 (Claimant testimony). She worked from age 14-24 picking apples and other crops. *Id.* At age 24 she came to Alaska. *Id.* At that time she worked for about five months stocking shelves at a convenience store. *Id.* She performed some construction work for two years at age 30-32. *Id.* This consisted of manual labor, and of driving a roller. *Id.*

31. The Claimant worked performing childcare / daycare from approximately 1988 to 2004 (Exs. 26.20, 26.25). She worked making sandwiches in 2002 (Ex. 26.25).

32. The Claimant worked at a [REDACTED] gas station / convenience store in 2008 (Ex. 26.08). However, she had difficulties with the lifting, bending, and standing associated with that job (Ex. 26.03). She quit the job for those reasons in or about late October 2008 (Ex. 26.03). She has not worked outside the home since then (Claimant testimony).

33. The Claimant lives with her sister (Claimant testimony; [REDACTED] testimony). Over the last four years she has done some baby-sitting for her sister's child, who is now four years old (Claimant testimony). However, she has not performed any babysitting for several months now. *Id.*

IV. Current Functional Limitations.

34. The Claimant often falls when walking across a level floor, and when walking up or down stairs ([REDACTED] testimony). Her dizziness / instability has gotten progressively worse over the last seven years. *Id.*

35. The Claimant cannot stand for very long without pain ([REDACTED] testimony). When she does stand for any length of time, her legs swell up "huge." *Id.* When her legs swell-up, she needs to lie down and take anti-edema pills. *Id.* The Claimant also has difficulties with lifting and bending (Ex. 26.03).

36. Based on her current limitations, the Claimant cannot perform her prior work (Claimant testimony).

V. Relevant Case Procedural History.

37. The Claimant applied for Supplemental Security Income (SSI) with the United States Social Security Administration on or about February 2, 2009 (Exs. 26.182 – 26.185). The Claimant’s application was initially denied and it is currently in appeal status (Claimant testimony).

38. The Claimant applied for Interim Assistance (IA) benefits on April 28, 2010 (Exs. 2.0 – 2.9). On May 5, 2010 a physician completed a Preliminary Examination for Interim Assistance (Form AD-2) on behalf of the Claimant (Ex. 3.003 – 3.004). The physician diagnosed the Claimant as suffering from diabetes type 2 and congenital heart disease / aortic insufficiency. *Id.* The physician further indicated that the Claimant was not expected to recover from these conditions. *Id.*

39. The Division denied the Claimant’s application on December 15, 2010 (Ex. 4). The Claimant requested a hearing contesting the Division’s denial of her IA application on January 5, 2011 (Ex. 5).

PRINCIPLES OF LAW

Burden of Proof; Standard of Proof.

This case involves an application for Interim Assistance benefits. When an application is denied, the applicant has the burden of proof ⁴ by a preponderance of the evidence. ⁵

The Interim Assistance Program; Use of SSA Disability Criteria.

Interim Assistance is a benefit provided by the State of Alaska to Adult Public Assistance applicants while they are waiting for the Social Security Administration (SSA) to approve their Supplemental Security Income (SSI) applications. AS 47.25.255; 7 AAC 40.170(a) and (b). The criteria which must be satisfied in order to qualify for Interim Assistance are set forth in 7 AAC 40.180.

The criteria which must be satisfied in order to qualify for Interim Assistance under 7 AAC 40.180 are equivalent to, and incorporate by reference, the criteria which must be satisfied in order to qualify for Social Security Supplemental Security Income (SSI) disability benefits pursuant to 42 USC 1381 - 1383f and Title 20 of the Code of Federal Regulations (CFR). Pursuant to 20 CFR 404.1505(a), “disability” is defined as “the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in

⁴ “Ordinarily the party seeking a change in the status quo has the burden of proof.” *State of Alaska Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁵ Preponderance of the evidence is defined as “[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” *Black’s Law Dictionary* at 1064 (West Publishing, 5th Edition, 1979).

death or which has lasted or can be expected to last for a continuous period of not less than 12 months.”

The Social Security Administration’s SSI disability analysis involves a sequential multistep evaluation. *Briscoe ex rel. Taylor v. Barnhart*, 425 F.3d 345, 351-52 (7th Cir. 2005). This evaluation considers (1) whether the claimant is presently engaged in substantial gainful activity; (2) whether the claimant has a severe impairment or combination of impairments (the duration of the impairment is an aspect of this severity requirement); (3) whether the claimant's impairment meets or equals any impairment listed in the regulations as being so severe as to preclude substantial gainful activity; (4) whether the claimant's residual functional capacity leaves him unable to perform his past relevant work; and (5) whether the claimant is unable to perform any other work existing in significant numbers in the national economy. 20 C.F.R. §§ 404.1520, 416.920. A finding of disability requires an affirmative answer at either step three or step five.

Substantial Gainful Activity

The first step in the analysis is to determine whether the applicant is performing “substantial gainful activity” as defined by the applicable Social Security regulations. “[S]ubstantial gainful activity” means “work that (a) involves doing significant and productive physical or mental duties, and (b) is done (or intended) for pay or profit.” 20 CFR 404.1510.

The regulations state that work “may be substantial even if it is done on a part time basis . . .”. 20 CFR 404.1572(a). If the applicant is engaged in “substantial gainful activity” based on these criteria, then he is not disabled. 20 CFR 416.920(a)(4)(i). If, however, the Claimant is not performing “substantial gainful activity” as defined by the above-quoted regulations, it is necessary to proceed to the next step of the disability analysis and determine whether the Claimant has a severe impairment.

Severity of Impairments – In General.

The second step in the analysis is to determine whether the applicant’s impairment is “severe” as defined by the applicable Social Security regulations. The Social Security Regulations define a severe impairment as one that *significantly* limits a person’s physical or mental ability to perform “basic work activities.” 20 C.F.R. 404.1521(a); 20 CFR 416.920(c); 20 CFR 416.921(a). 20 CFR 416.921(b) defines “basic work activities.” That regulation states in relevant part as follows:

When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include - (1) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (2) capacities for seeing, hearing, and speaking; (3) understanding, carrying out, and remembering simple instructions; (4) use of judgment; (5) responding appropriately to supervision, co-workers and usual work situations; and (6) dealing with changes in a routine work setting.

Evidence from acceptable medical sources is necessary to establish whether a claimant has a medically determinable impairment. 20 C.F.R. § 404.1513(a); see also 20 CFR 416.908. The claimant's own statement of symptoms alone will not suffice. 20 C.F.R. § 416.908. Acceptable

medical sources include licensed physicians and psychologists. 20 C.F.R. § 404.1513(a). Substantial weight must be given to the opinion, diagnosis and medical evidence of these medical providers unless there is good cause to do otherwise. 20 C.F.R. § 416.1527(d).

If the impairment is not severe, the applicant is not disabled. 20 CFR 416.920(a)(4)(ii). If an applicant is severely impaired, then it is necessary to proceed to the next step of the disability analysis and determine whether the Claimant's impairment meets the 12 month durational requirement.

Duration.

The next step in the analysis is to determine whether the applicant's severe impairment has 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.⁶ 20 CFR 416.909. If the severe impairment does not satisfy this duration requirement, the applicant is not disabled. 20 CFR 416.920(a)(4)(ii). If the severe impairment satisfies this duration requirement, then it is necessary to proceed to the next step of the disability analysis and determine whether the Claimant's impairment meets or equals the criteria set forth in the Social Security Administration's listing of impairments.

Severe Impairment That Meets or Equals a Listing.

The next step in the analysis is to determine whether the applicant's severe impairment meets or medically equals the listing of impairments contained in the Social Security regulations located at 20 CFR Part 404, Subpart P, Appendix 1. The claimant bears the burden of establishing that his impairments satisfy "the listings." *Tackett v. Apfel*, 180 F.3d 1094, 1098-1099 (9th Cir. 1999); *Sullivan v. Zebley*, 493 U.S. 521, 530-531, 110 S.Ct. 885, 107 L.Ed.2d 967 (1990).

A finding of disability may also be based on the *combined effect* of multiple impairments which, considered individually, are not of the requisite severity. *See* 20 CFR § 404.1523; 20 CFR § 416.923.

If the applicant's severe impairment(s) meets or medically equals an applicable Listing as set forth in the SSA regulations at 20 CFR Part 404, Subpart P, Appendix 1, then the applicant is deemed disabled and no further inquiry is required. 20 CFR 416.920(a)(4)(iii). However, if the severe impairment does not meet or medically equal the listing of impairments, then it is necessary to proceed to the next step in the analysis and determine whether the applicant can still perform his prior relevant work.

Capability of Performing Previous Relevant Work

The next step is to determine whether the applicant's severe impairment prevents him from performing his previous relevant work. If the applicant is not prevented from performing his previous relevant work, the applicant is not disabled. 20 CFR 416.920(a)(4)(iv). If the applicant

⁶ Although the issue of duration is technically separate and distinct from the issue of severity, the Social Security Disability analysis, as set forth in federal regulation 20 CFR 416.920(a)(4)(ii), treats the durational requirement as part of the "step two" severity analysis.

can no longer perform his previous work, it is then necessary to proceed to the final step in the analysis and determine whether the applicant can perform any other work.

Capability of Performing Other Work

The final step in the disability analysis is to determine whether the applicant is capable of performing any other work. Pursuant to 20 CFR 404.1545(a)(5)(ii), if a claimant cannot perform his or her past relevant work, it is then necessary to decide whether the applicant “can make an adjustment to any other work” At this stage, however, the burden of proof shifts from the claimant to the agency. *See* 20 CFR 404.1562(c)(2); *see also* *Robinson v. Sullivan*, 956 F.2d 836, 839 (8th Cir. 1992); *Simmons v. Massanari*, 264 F.3d 751, 754-55 (8th Cir. 2001).

Whether an applicant is capable of performing other work 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 CFR 416.920(a)(4)(v).

ANALYSIS

Introduction; Basic Definition of Disability.

Pursuant to 20 CFR 404.1505(a), “disability” is defined as “the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” As an applicant for Interim Assistance benefits, the Claimant has the burden of proving, by a preponderance of the evidence, that her impairments satisfy the Social Security disability criteria (see Principles of Law, above). If they do, the Claimant is disabled by Social Security standards and is eligible for Interim Assistance benefits. If they do not, the Claimant is not disabled by Social Security standards and is not eligible for Interim Assistance.

I. Is the Claimant Performing Substantial Gainful Activity?

The first element of the disability analysis is whether the claimant is performing “any substantial gainful activity.” Pursuant to 20 CFR 404.1510, “substantial gainful activity” means “work that (a) involves doing significant and productive physical or mental duties, and (b) is done (or intended) for pay or profit.”

The Claimant has not worked outside the home since 2008 (Ex. 26.03), and she has not worked in her sister’s home as a babysitter for several months (Claimant testimony). The Division did not contest this evidence. Accordingly, the Claimant has satisfied the first step of the analysis – she has proven, by a preponderance of the evidence, that she is not engaged in “substantial gainful activity.” It is therefore necessary to proceed to the next step and to determine whether the Claimant is severely impaired.

II. Does the Claimant Have a Severe Impairment?

A severe impairment is one that “significantly limits [a person’s] physical or mental ability to do basic work activities.” 20 CFR 416.920(c). Thus, in order to avoid being found to be *not disabled* at this stage, the Claimant must prove that her impairments, (either individually or together), are medically severe pursuant to 20 CFR 416.920(c). To do this, the Claimant must demonstrate that her impairments significantly limit her ability to perform basic work activities such as walking, standing, sitting, and lifting (20 CFR 416.921(b)).

The evidence indicates that, collectively, the Claimant’s impairments qualify as severe:

A. In May 2005 the Claimant’s physician wrote that “she appears to be very debilitated because of the ongoing low back pain” (Ex. 26.21). The Claimant has had weight-bearing pain in her feet, ankles, thighs, hips, and neck, associated with arthritis, since September 2005 or earlier (Ex. 26.119). The Claimant has complained of generalized pain, and was diagnosed with chronic pain syndrome, in February 2007 (Ex. 26.68). The Claimant has used a cane due to her right knee pain, intermittently, since at least June 2010 (Ex. 3.042).

B. Claimant fell down some stairs in August 2010 (Ex. 3.024). On September 15, 2010 the Claimant reported to her doctor that she had problems walking; that she “could not even walk around Wal-Mart;” that she had problems going up and down stairs; and that she could “not open lids with her hands (Ex. 3.024). On September 15, 2010 the Claimant reported that she had a burning pain in her outer left calf which radiated up to her left thigh (Ex. 3.024).

C. Claimant often falls when walking across a level floor, and when walking up or down stairs (█ testimony). She cannot stand for very long without pain (█ testimony). When she does stand, her legs swell up “huge.” *Id.* When her legs swell-up, she needs to lie down and take anti-edema pills. *Id.* The Claimant has used a cane, and more recently a walker, for mobility (Claimant testimony). She also has difficulties with lifting and bending (Ex. 26.03).

In summary, the evidence demonstrates that the Claimant’s ability to walk, stand, bend, and lift are significantly limited (20 CFR 416.921(b)). Accordingly, the Claimant has carried her burden and proven, by a preponderance of the evidence, that her physical impairments are collectively “severe” as defined by 20 CFR § 404.1520(c) and 20 CFR § 416.920(c). It is therefore necessary to proceed to the next step of the Social Security disability analysis and to determine whether the Claimant’s physical impairments satisfy the twelve month durational requirement.⁷

III. Do the Claimant’s Physical Impairments Satisfy the Durational Requirement?

The next step, pursuant to 20 CFR 416.909, is to decide whether or not the Claimant’s severe impairments have lasted, or can be expected to last, for a continuous period of at least 12 months.

⁷ The Claimant’s *physical* impairments have collectively been found to be medically severe at this stage of the disability analysis (see above). Accordingly, given the disposition of this case, it is not necessary to determine whether the Claimant’s *mental* impairments are also medically severe.

In this regard, it is important to note that the 12-month duration requirement of 20 CFR 416.909 is *retrospective* as well as *prospective*; it looks *back in time* as well as *forward in time* (i.e. the impairment “must have lasted or must be expected to last”).

The Claimant has complained of thoracic spinal pain since being injured in a fall in April 2002 (Ex. 26.24), and has sought medical treatment for same since June 2002 (Exs. 26.24 – 26.26, 26.47). In December 2004 the Claimant received a transforaminal epidural steroid injection at C6 for cervical spine pain (Exs. 26.39 – 26.40). In May 2005 the Claimant received a caudal epidural steroid injection for back pain (Exs. 26.34 – 26.35). The Claimant has had weight-bearing pain in her feet, ankles, thighs, hips, and neck, associated with arthritis, since September 2005 or earlier (Ex. 26.119).

The Claimant has complained of generalized pain and was diagnosed with chronic pain syndrome in February 2007 (Ex. 26.68). In October 2008 the Claimant reported to her physicians that she had pain in her middle and lower back, radiating into both hips, and radiating on the right side all the way down to her leg and foot (Ex. 26.03). She also reported pain in her shoulders at this time (Ex. 26.03). Finally, the Claimant has complained to her doctor of right knee pain since approximately November 2009 (Ex. 3.041). Accordingly, the Claimant’s back pain, neck pain, leg pain, and shoulder pain satisfy the 12-month durational requirement.

In addition, the Claimant has suffered from the following three impairments for at least 12 months:

- A. The Claimant has suffered from insulin-dependent diabetes mellitus for at least nine years (Ex. 26.24; Claimant testimony).
- B. The Claimant has suffered from congenital heart disease / aortic insufficiency since at least 2005 (Ex. 26.172).
- C. The Claimant has suffered from disequilibrium and vertigo since 2003 (Ex. 23.32).

In summary, the Claimant has suffered from a total of four different categories of impairments for at least 12 months. She therefore satisfies the durational requirement. The next step in the Social Security disability analysis requires a determination of whether any of the Claimant’s impairments meet the criteria of the Social Security Administration’s relevant Listings of Impairments.

IV. Do the Claimant’s Impairments Meet or Medically Equal “the Listings?”

The next step is to decide whether or not the Claimant’s severe impairments meet or medically equal, (alone or in combination), the criteria of the Listing of Impairments contained in the Social Security regulations at 20 CFR Part 404, Subpart P, Appendix 1. The Claimant bears the burden of establishing, by a preponderance of the evidence, that her impairments satisfy the requirements of a “Listings” impairment. *Tackett v. Apfel*, 180 F.3d 1094, 1098-1099 (9th Cir.1999); *Sullivan v. Zebley*, 493 U.S. 521, 530-531, 110 S.Ct. 885, 107 L.Ed.2d 967 (1990); Principles of Law, above.

A. The Claimant's Diabetes.

The Social Security disability system classifies the Claimant's diabetes under the Endocrine System listing. 20 CFR Part 404, Subpart P, Appendix 1, § 9.08. Section 9.08's requirements for a finding of disability due to diabetes are as follows:

A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station . . . or B. Acidosis occurring at least on the average of once every 2 months documented by appropriate blood chemical tests . . . or C. Retinitis proliferans; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

There are no medical reports in the record indicating that the Claimant has neuropathy to the degree required for a finding of disability under § 9.08(A). Similarly, the medical records do not contain evidence of acidosis under § 9.08(B). Finally, there are no medical reports in the record indicating that the Claimant has diabetes-related visual impairment to the degree required for a finding of disability under § 9.08(C). Accordingly, the Claimant's diabetes does not meet or equal the requirements of the Social Security Administration's applicable "listing."

B. The Claimant's Congenital Heart Disease / Aortic Insufficiency.

The Social Security disability system classifies the Claimant's Congenital Heart Disease / Aortic Insufficiency under the "Cardiovascular System" listing. 20 CFR Part 404, Subpart P, Appendix 1, § 4.00 *et. seq.* The specific section which the Claimant's impairment falls under is Section 4.06.⁸

There are no medical reports in the record indicating that the Claimant's Congenital Heart Disease / Aortic Insufficiency satisfies the requirements of Section 4.06. Accordingly, the Claimant's Congenital Heart Disease / Aortic Insufficiency does not meet or equal the requirements of the Social Security Administration's applicable "listing."

C. The Claimant's Back Pain and Leg Pain.

The Social Security disability system classifies the Claimant's back pain and leg pain under the "Musculoskeletal" listing. 20 CFR Part 404, Subpart P, Appendix 1, § 1.00 *et. seq.* Leg pain is analyzed under Section 1.02; back pain is analyzed under Section 1.04.

⁸ Section 4.06 provides in relevant part as follows:

4.06 Symptomatic congenital heart disease (cyanotic or acyanotic), documented by appropriate medically acceptable imaging (see 4.00A3d) or cardiac catheterization, with one of the following:

- A. Cyanosis at rest, and: 1. Hematocrit of 55 percent or greater; or 2. Arterial O₂ saturation of less than 90 percent in room air, or resting arterial PO₂ of 60 Torr or less. OR
- B. Intermittent right-to-left shunting resulting in cyanosis on exertion (e.g., Eisenmenger's physiology) and with arterial PO₂ of 60 Torr or less at a workload equivalent to 5 METs or less. OR
- C. Secondary pulmonary vascular obstructive disease with pulmonary arterial systolic pressure elevated to at least 70 percent of the systemic arterial systolic pressure.

Section 1.02 requires in relevant part as follows:

1.02 Major dysfunction of a joint(s) . . . Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b

Section 1.04 requires in relevant part as follows:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

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 pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

While the Claimant's history of back pain and leg pain is substantial, there are no medical reports in the record indicating that the Claimant's leg and/or back pain satisfy the specific requirements of Section 1.02 and/or 1.04, respectively. Accordingly, the Claimant's back pain and leg pain do not meet or equal the requirements of the Social Security Administration's applicable "listing."⁹

⁹ In general, in order for a claimant to meet the criteria set out in the musculoskeletal listing, he or she must have "an extreme limitation of the ability to walk" or "an extreme loss of function of both upper extremities." 20 CFR Part 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1). The regulations give *the inability to walk without a walker*, or two crutches, or two canes, as an example of an extreme limitation of the ability to walk. *Id.* at Section 1.00(B)(2)(b)(2).

During the hearing of March 9, 2011 the Claimant testified that, although she had previously been using a cane for assistance, *she had recently begun using a walker*. If the Claimant's inability to walk without a walker were to continue for a period of twelve months so as to satisfy the 12-month durational requirement (see discussion at pages 10-11,

D. The Claimant's Vertigo and Related Issues.

The Social Security disability system classifies the Claimant's vertigo and related issues under the "Special Senses and Speech" listing. 20 CFR Part 404, Subpart P, Appendix 1, § 2.00 *et. seq.* The listing which governs the Claimant's specific problem is Section 2.07.¹⁰

While the Claimant's history of vertigo and related issues is substantial, there are no medical reports in the record indicating that the Claimant's vertigo satisfies the specific requirements of Section 2.07, above. Accordingly, the Claimant's vertigo and related issues do not meet or equal the requirements of the Social Security Administration's applicable "listing."

E. Is The Claimant Disabled Based on a *Combination* of Her Impairments?

As demonstrated above, none of the Claimant's impairments, *individually*, satisfy the requirements of the Social Security Administration's applicable "listings." However, a finding of disability may also be based on the *combined effect* of multiple impairments which, considered individually, are not of the requisite severity. *See* 20 CFR § 404.1523;¹¹ 20 CFR § 416.923.

The consideration of the combined effect of different impairments is mandatory. A hearing officer is required to assess the combined effect of a social security disability claimant's impairments throughout the five-step analytical process. *Fleming v. Barnhart*, 284 F.Supp.2d 2566 (2003). If a claimant has a combination of impairments, no one of which meets a listed impairment under the regulations, the hearing officer must compare his or her findings with those for closely analogous listed impairments. *Washington v. Commissioner of Social Security*, 659 F.Supp.2d 738 (2009). If the findings related to the claimant's impairments are at least of equal medical significance to those of a listed impairment, the hearing officer must find that the claimant's combination of impairments is medically equivalent to that listing. *Id.*

In this case, the record is clear that the Claimant suffers from serious diabetes, back pain and leg pain, vertigo and related issues, and depression, and that she also has some degree of congenital

above), the Claimant could "meet the Listing" for musculoskeletal impairments, and could be disabled on that basis alone. However, at this time the Claimant has not been using a walker long enough to satisfy the requirements of Sections 1.02 or 1.04.

¹⁰ Section 2.07 provides in relevant part as follows:

2.07 Disturbance of labyrinthine-vestibular function (including Ménière's disease), characterized by a history of frequent attacks of balance disturbance, tinnitus, and progressive loss of hearing. With both . . . A. Disturbed function of vestibular labyrinth demonstrated by caloric or other vestibular tests; and B. Hearing loss established by audiometry.

¹¹ 20 CFR 404.1523, titled "Multiple Impairments," provides in relevant part as follows:

In determining whether your physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the law, we will consider the combined effect of all of your impairments without regard to whether any such impairment, if considered separately, would be of sufficient severity. If we do find a medically severe combination of impairments, the combined impact of the impairments will be considered throughout the disability determination process

heart disease / aortic insufficiency (*see* Findings of Fact at Paragraphs 2-27, above). Although (as discussed in the preceding section) the Claimant does not meet the precise requirements of any one listing, the combination of her impairments, taken as a whole, are easily more severe than the requirements of any one of the four relevant individual listings.

In summary, the Claimant is disabled pursuant to 20 CFR § 404.1523 because the combined effect of the Claimant's impairments is at least equal in medical significance to the Listings criteria for any one of the Claimant's four individual impairments. Accordingly, the Claimant is considered disabled for purposes of the Interim Assistance Program, and no further analysis is required. However, in order to provide a complete analysis of the Claimant's disability claim, this decision will proceed to the last two steps of the disability analysis and determine (1) whether the Claimant can still perform her prior work; and (if not) (2) whether the Claimant can perform any other work.

V. Do the Claimant's Impairments Prevent Her from Performing Her Previous Work?

The next step is to determine whether the Claimant's impairments prevent her from performing her previous relevant work. If the Claimant is not prevented from performing her previous relevant work, she is not disabled. 20 CFR 416.920(a)(4)(iv). If, however, the Claimant can no longer perform her past relevant work, it is necessary to proceed to the final step in the disability analysis and determine whether the Claimant can perform any other work.

A Residual Functional Capacity Assessment (RFC),¹² and the testimony of a vocational specialist, are normally used in Social Security disability cases to determine whether or not a claimant can perform his or her past relevant work. *See* 20 CFR 404.1545(a)(5), 20 CFR 404.1560(b)(2). Unfortunately, no such testimony exists in this case.¹³ The only evidence on this issue is the Claimant's hearing testimony and her statements to her doctors contained in her medical records.

The Claimant worked from age 14-24 as a farm laborer (Claimant testimony). At age 24 she came to Alaska. *Id.* At that time she worked for about five months stocking shelves at a convenience store. *Id.* She performed some construction work for two years at age 30-32. *Id.* This consisted of manual labor, and of driving a roller. *Id.* The Claimant worked performing childcare / daycare from approximately 1988 to 2004 (Exs. 26.20, 26.25). She worked making sandwiches in 2002 (Ex. 26.25). The Claimant worked most recently at a gas station/convenience store in 2008 (Ex. 26.08).

The Claimant now, however, has physical limitations which, she asserts, prevent her from performing her prior work. The Claimant often falls when walking across a level floor, and when walking up or down stairs (██████ testimony). She cannot stand for very long without pain (██████ testimony). When she does stand, her legs swell up "huge." *Id.* When her legs swell up, she needs to lie down and take anti-edema pills. *Id.* The Claimant also has difficulties with the lifting and bending (Ex. 26.03).

¹² "Residual functional capacity," which may prevent a finding of disability for Social Security purposes, is defined as that which an individual is still able to do despite the limitations caused by his or her impairments. *See* 20 CFR 404.1520(d); *Fagnoli v. Massanari*, 247 F.3d 34 (3rd Cir. 2001).

¹³ In the Social Security system it is the responsibility of the agency to provide for a Residual Functional Capacity Assessment. *See* 20 CFR 404.1545(a)(3). The State of Alaska's Interim Assistance regulations do not address this issue.

The Claimant asserts that, due to her current physical impairments, she can no longer perform her prior work (Claimant testimony). The Claimant's work history (above) indicates that her prior jobs all involved some degree of physical work; they were not sedentary jobs. Based on the medical evidence, the Claimant's testimony regarding her physical and work limitations is credible. Further, the Division never asserted that the Claimant *could* still perform her prior relevant work. Rather, the Division asserted only that the Claimant's diabetes, and the Claimant's congenital heart disease / aortic insufficiency, did not meet or equal the requirements of the United States Social Security Administration's "Listing of Impairments" (see Exs. 3.001, 3.002, and Medical Reviewer testimony).

Accordingly, the Claimant has carried her burden and proven, by a preponderance of the evidence, that she can no longer perform her past relevant work. It is therefore necessary to proceed to the final step in the Social Security disability analysis: determining whether the Claimant can perform any work.

VI. Do The Claimant's Impairments Prevent Her From Performing Any Work?

Pursuant to 20 CFR 404.1545(a)(5)(ii), if it is determined that a claimant cannot perform his or her past relevant work, it is then necessary to proceed to the final step in the disability analysis and decide whether the applicant "can make an adjustment to any other work that exists in the national economy" or, in other words, to determine whether the applicant is capable of performing other jobs.

A. The Burden of Proof Shifts to the Division.

At this stage, however, the burden of proof shifts from the claimant to the agency. *See* 20 CFR 404.1562(c)(2); *see also Robinson v. Sullivan*, 956 F.2d 836, 839 (8th Cir. 1992). To meet this burden, the agency must show: (1) that the claimant's impairment still permits certain types of activity necessary for other occupations and the claimant's experience is transferable to other work; and (2) that specific types of jobs exist in the national economy which are suitable for a claimant with these capabilities and skills. *Decker v. Harris*, 647 F.2d 291, 294 (2nd Cir. 1981). It is not the claimant's burden to produce or develop vocational evidence at this step. *See Thompson v. Sullivan*, 987 F.2d 1482, 1491 (10th Cir. 1993). It is also held that a hearing officer is not qualified to provide affirmative vocational evidence. *Wilson v. Califano*, 617 F.2d 1050, 1053-54 (4th Cir. 1980).

B. The Division Did Not Prove That The Claimant Can Perform Any Other Work.

The Division asserts that the Claimant can still perform some form of work. However, the Division presented no evidence that the Claimant's impairment still permits certain types of activity necessary for other occupations, that the Claimant's experience is transferable to other work, or that specific types of jobs exist in the national economy which are suitable for the Claimant. Accordingly, the Division has failed to present the evidence necessary to meet its burden of proof at this step of the disability analysis (see regulation and cases cited in preceding paragraph).¹⁴

¹⁴ Neither the Division's Hearing Representative nor its Medical Reviewer can be faulted for this, however, because (unlike the federal Supplement Security Income (SSI) Program), the Interim Assistance Program does not

C. Summary.

In summary, the Claimant proved that she can no longer perform her prior work; the burden of proof shifted to the Division, and the Division then failed to prove that the Claimant is capable of performing any other work. The Claimant is therefore deemed disabled on this basis according to the Social Security regulations and relevant case law. 20 CFR 416.920(a)(4)(v).

CONCLUSIONS OF LAW

1. The Claimant carried her burden and proved, by a preponderance of the evidence, that:
 - a. She is not currently engaged in substantial gainful activity as defined by 20 CFR 404.1510.
 - b. Her back pain and leg pain (SSA Impairment Listing Nos. 1.02 and 1.04) constitute medically severe impairments as defined by 20 CFR 416.920(c) and 20 CFR 416.921(b).
 - c. Her back pain and leg pain (SSA Impairment Listing Nos. 1.02 and 1.04) have lasted or can be expected to last for 12 months or longer, and the Claimant therefore satisfies the twelve- month durational requirement of 20 CFR 416.909 and 20 CFR 416.920(a)(4)(ii).
2. The Claimant did not carry her burden and failed to prove, by a preponderance of the evidence, that her diabetes (20 CFR Part 404, Subpart P, Appendix 1, § 9.08), Congenital Heart Disease / Aortic Insufficiency (20 CFR Part 404, Subpart P, Appendix 1, § 4.06), back pain and leg pain (20 CFR Part 404, Subpart P, Appendix 1, § 1.02, 1.04), or vertigo and related issues (20 CFR Part 404, Subpart P, Appendix 1, § 2.07), meet the specific requirements of the Social Security Administration's applicable Listing of Impairments.
3. The Claimant carried her burden and proved, by a preponderance of the evidence, that:
 - a. The combined effect of the Claimant's four types of impairments, as listed in Paragraph 2, above, is at least equal in medical significance to the Listings criteria for any one of the Claimant's four individual impairments (20 CFR § 404.1523).
 - b. The Claimant can no longer perform her prior work as a result of the combined effect of the four types of impairments listed in Paragraph 2, above.
4. The Division did not carry its burden and failed to prove, by a preponderance of the evidence, that the Claimant can still perform work of any kind (20 CFR 404.1545(a)(5)(ii)).
5. The Division was therefore not correct when, on December 15, 2010, it denied the Claimant's April 28, 2010 application for Interim Assistance benefits, because the Claimant allegedly did not meet the Interim Assistance Program's disability requirements.

currently provide the parties or this Office with a vocational expert, who would normally present this important evidence.

DECISION

The Division was not correct when, on December 15, 2010, it denied the Claimant’s April 28, 2010 application for Interim Assistance benefits.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision. To appeal, send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

DATED this 10th day of May, 2011.

(signed)

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 10th day of May 2010 true and correct copies of the foregoing document were sent to the Claimant via USPS mail, and to the remainder of the service list by secure / encrypted e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested

_____, DPA Hearing Representative
_____, DPA Hearing Representative

_____, Policy & Program Development
_____, Staff Development & Training
_____, Administrative Assistant II
_____, Eligibility Technician I

(signed)

By: _____
J. Albert Levitre, Jr.
Law Office Assistant I