

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Phone: (907) 334-2239
Fax: (907) 334-2285

**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In The Matter Of:)
)
 [REDACTED],) OHA Case No. 11-FH-92
)
 Claimant.) DPA Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Interim Assistance on or about December 3, 2010 (Ex. 4). The State of Alaska Division of Public Assistance (DPA or Division) denied his application on March 2, 2011 (Ex. 4). The Claimant requested a hearing to contest the Division's denial of his application on March 4, 2011 (Ex. 5.1).

This Office has jurisdiction to decide this case pursuant to 7 AAC 49.010.

The Claimant's hearing began as scheduled on April 6, 2011 before Hearing Examiner Jay Durych. The Claimant attended the hearing in person and represented himself. [REDACTED], M.S., a Mental Health Clinician II with the State of Alaska Department of Corrections, attended the hearing in person and testified on the Claimant's behalf. Public Assistance Analyst [REDACTED] attended the hearing in person and represented the Division. Prior to receiving testimony on the merits of the case, the Claimant requested that his hearing be postponed. The Division did not object. Accordingly, on April 7, 2011 the Claimant's hearing was continued to May 11, 2011.

The Claimant's hearing resumed on May 11, 2011. The Claimant participated in the hearing by phone, represented himself, and testified on his own behalf. Public Assistance Analyst [REDACTED] attended the hearing in person and represented and testified on behalf of the Division. [REDACTED], M.P.H., the Division's Interim Assistance Medical Reviewer, participated in the hearing by phone and testified on behalf of the Division. Before the hearing could be completed, the telephone connection with the Claimant was lost and could not be reestablished. Accordingly, on May 12, 2011 the Claimant's hearing was continued to May 19, 2011.

The Claimant's hearing resumed on May 19, 2011. The same persons participated in the May 19, 2011 hearing as had participated in the May 11, 2011 hearing, and in the same capacities. Following the

hearing the record was left open until June 17, 2011 for the submission of additional medical documentation by the Claimant. The Division was given until June 24, 2011 to submit a post-hearing filing. Neither party submitted any additional medical records or other filings. Accordingly, on June 24, 2011 the record was closed and the case became ripe for decision.

ISSUE

Was the Division correct to deny the Claimant's December 3, 2010 application for Interim Assistance benefits on March 2, 2011, based on the assertion that the Claimant did not meet the Interim Assistance Program's disability requirements?

SUMMARY OF DECISION

The Claimant is not currently engaged in substantial gainful activity, and his neck and back pain/cervalgia/degenerative disk disease constitute medically severe impairments as defined by regulation. The Claimant's neck and back pain/cervalgia/degenerative disk disease have lasted or can be expected to last for 12 months or longer, and the Claimant therefore satisfies the twelve-month durational requirement. The Claimant's neck and back pain/cervalgia/degenerative disk disease do not meet the specific requirements of the Social Security Administration's applicable Listing of Impairments. The Claimant can no longer perform his prior work as a result of his impairments. However, the Claimant can still perform sedentary work. Because the Claimant can still perform sedentary work, he is not disabled.

FINDINGS OF FACT

The following facts¹ were established by a preponderance of the evidence:

I. The Claimant's Physical and Mental Impairments.

1. The Claimant was born in [REDACTED], 1958 (Ex. 3.0) and was 52 years old at the time of the hearings held in this case.

2. When the Claimant was a child he broke both his collar bones (Ex. C-17). When the Claimant was young his right middle and index fingers were cut off; the index finger was re-attached. *Id.* "Many years ago" the Claimant was working on a roof, fell off, and landed on his back. *Id.* In 2009 the Claimant broke some ribs on his right side when he fell. *Id.* The Claimant was involved in a car accident on an unspecified date in which some of his teeth were knocked out. *Id.* The Claimant's past medical history also includes anxiety, hepatitis C, hiatal hernia, tobacco use, and a prior history of alcohol abuse / dependence (Ex. 2.072).

3. On August 3, 2010 Dr. [REDACTED], M.D. performed a psychiatric assessment of the Claimant (Exs. 2.004 – 2.011). In this assessment, Dr. [REDACTED] stated in relevant part as follows:

¹ All of the medical reports in the record (approximately 112 pages total) were reviewed and considered during the preparation of this decision. However, some of the medical records were cumulative, and some were less relevant than others. Accordingly, not every exhibit is specifically referenced in this decision. Abbreviations used in the medical reports have been spelled out in this decision for ease of understanding.

[The Claimant] recalls one psychiatric hospitalization . . . for three days in 1994 [Otherwise] he has not been admitted to residential treatment care for any form of “mental disorder,” although he has had structured “sober house” stays as part of his extensive history of involvement in substance abuse treatment.

[The Claimant’s] contacts with mental health professionals on an outpatient basis have often been associated with the receipt of substance abuse and chemical dependency interventions These interventions consisted of individual psychotherapy, as well as extensive medication trials There was a suggestion of a possible bipolar disorder, but [the Claimant] was intermittently drinking heavily and using a variety of substances during [the] period [he was receiving] mental health services [H]e reports that he has had no psychiatric or mental health professional contacts “for years.”

[The Claimant] reports multiple closed head injuries resulting in a subjective sense of being “forgetful,” as well as “stressed out” The subjective sense of difficulty with short-term memory has been especially prominent since a traumatic brain injury [in] February 2009, associated with an assault during a period of heavy intoxication.

. . . .

[The Claimant] has been unemployed for the past four years

. . . .

[The Claimant’s] general health is reasonably good, but he does have gradually increasing musculoskeletal pain. He is also hepatitis positive Surgical history includes the amputation and repair of his right middle finger At the present time he is not using any medication on a daily basis [H]istorically he has been heavily involved in the use of street drugs and illicit substances, but has been abstinent recently [H]e has been a very heavy alcohol user for many years, but is now sustaining a sober state His longest period of sobriety was two years.

. . . .

[The Claimant] . . . is unimpaired as [to] his memory, including long-term, short-term, and immediate recall

[The Claimant’s] judgment is adequate, at least in terms of simple everyday practical matters

Diagnosis

Axis I: Alcohol Dependence in early, sustained remission in a controlled setting (DSM-IV TR Code 303.90).

Axis II: Personality disorder, anti-social type (DSM-IV TR Code 301.79).

Axis III: Multiple, deferred.

Axis IV: Moderate (incarceration, pain, unemployment).

Axis V: Global Assessment of Function (GAF) scale score 65² (based on psychological factors only without consideration of substance use, abuse, [and/or] dependence behaviors).

Today [the Claimant] is not describing excessive free-floating anxiety, irrational fears (phobias), or the sudden intrusions of overwhelming anxiety (panic attacks); therefore, the classic anxiety disorders are ruled out. There are minimal physiological signs of depression, no subjective depression of mood . . . all of which is suggestive of the absence of a diagnosable affective disorder.

[The Claimant's] reality contact is well established and sustained; therefore, he is not psychotic. (other than in the context of heavy intoxication)

The primary supportable disorder in this case is in the area of substance abuse and chemical dependency [H]e is . . . highly vulnerable to relapse.

[The Claimant] has a history of multiple physical injuries to the head [T]here was a recent, more dramatic closed head injury with traumatic brain injury when he was struck in the head 18 months ago. At that time he experienced a loss of consciousness and subsequent memory complaints, but without seizure . . . the combination of head injury and alcohol use is difficult to sort out [T]here is no clear indication of a cognitive disorder, let alone dementia

4. In a *Disability and Vocational Report* dated December 9, 2010 (Exs. 2.016 – 2.021), the Claimant described the physical and mental problems which interfered with his ability to work or perform routine daily activities as numbness in his arms, pain in his left ankle and leg, pain in his

² The “Global Assessment of Functioning” or “GAF” scale is a scale used to measure psychological, social, and occupational functioning, ranging from 1 (lowest level of functioning) to 100 (highest level of functioning). See Mosby's Medical Dictionary, 8th Edition (Elsevier 2009).

According to the Diagnostic and Statistical Manual Of Mental Disorders: DSM-IV-TR (American Psychiatric Association, 2000) at pp. 32 - 37, the Global Assessment of Functioning (GAF) is a numeric scale (0 through 100) used by mental health clinicians and physicians to subjectively rate the social, occupational, and psychological functioning of adults (how well or adaptively one is meeting various problems-in-living). The DSM-IV-TR describes the significance of GAF scores in relevant part as follows:

70-61 *Some mild symptoms* (e.g., depressed mood and mild insomnia) OR some difficulty in social, occupational, or school functioning (e.g., occasional truancy, or theft within the household), *but generally functioning pretty well*, has some meaningful relationships. [Emphasis added].

60-51 Moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) OR moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers).

50-41 Serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job).

upper and lower back, pain in his shoulder, pain in his stomach and liver, carpal tunnel syndrome, Hepatitis C, chronic hypertension, and mental issues (Ex. 2.016).

5. In the *Disability and Vocational Report* dated December 9, 2010 (Exs. 2.016 – 2.021), the Claimant stated (1) that the numbness in his arms prevented him from holding his arms up; (2) that his left ankle pain prevented him from being able to stand for long periods of time; (3) that his upper and lower back pain prevented him from bending over or kneeling; and (4) that his “hypertension [made] it very difficult to deal with people” (Ex. 2.016).

6. On January 20, 2011 Dr. [REDACTED], M.D. performed a physical examination of the Claimant (Exs. 2.036 – 2.039). Dr. [REDACTED]’ report of that examination states in relevant part as follows:

[The Claimant states that he cannot work] primarily because he has pain. He has chronic back pain. He has [had] low back pain for about 5 years. No significant injury. He never had a back doctor and never had a back injection. He never had [an] x-ray or MRI. He has right flank pain as well. He reports pain in his back that goes up between his shoulder blades and he also has chronic neck pain. He says that he worked as a mechanic last in 1998. He says that he has had flank pain and right upper quadrant abdominal pain for “a few years”

He has [had] Hepatitis C for 15 to 20 years. He has never had a liver ultrasound. He has never had labs

. . . .

He says that he has poor mood and poor memory He says that he has [a] fear of crowds. It sounds like he has agoraphobia. He has anger issues. He says that he cannot hold a job because he cannot be around people

. . . .

He has some mild cervical tenderness. He has some mild spinal tenderness between his shoulder blades and down in his lumbar spine. He does not report any subjective pain down his legs. He is able to bend down and touch his toes. He is able to elevate his arms. His strength appears to be intact in his [arms]. He is missing one of the tips of his fingers and he has a splint . . . on his left fifth finger He has some mild right CVA tenderness he is able to get from sitting to standing unassisted. He ambulates down the hallway with a slow, steady gait.

7. Dr. [REDACTED] assessed the Claimant as having a primary diagnosis of chronic mid/low back pain resulting from mild degenerative disk disease (Ex. 2.038). Other medical problems identified by Dr. [REDACTED] were abdominal pain, cervicgia,³ chronic Hepatitis C, hyperthyroidism, nicotine dependence, agoraphobia without history of panic disorder, and chronic major depression (Ex. 2.038).

8. On January 20, 2011 Dr. [REDACTED] completed the Division’s *Preliminary Examination for Interim Assistance* form (Form AD#2) (Exs. 2.022 – 2.023). On that form he stated that the Claimant’s

³ “Cervicgia” is discomfort or more intense forms of pain that are localized to the cervical region. See U.S. National Center for Biotechnology Information website at <http://www.ncbi.nlm.nih.gov/mesh?term=cervicgia&cmd=DetailsSearch> (date accessed August 16, 2011). The term generally refers to pain in the posterior or lateral regions of the neck. *Id.*

diagnosis was “neck/back pain – [illegible], degenerative disk disease, chronic Hepatitis C, depression with agoraphobia, chronic pain” (Ex. 2.023). He also stated that the Claimant was not expected to recover from these conditions (Ex. 2.023).

9. The Claimant’s spine was x-rayed on January 20, 2011 (Ex. C-31). The radiologist’s report dated January 28, 2011 (Ex. C-31) indicated degenerative disk disease in the cervical, thoracic, and lumbar sections of the Claimant’s spine (Ex. C-31). The report also indicated hyperinflation of the lungs consistent with chronic obstructive pulmonary disease (COPD). *Id.*

10. On February 24, 2011 the Claimant had an appointment with his treating physician Dr. [REDACTED] (Exs. C-23 – C-25). Dr. [REDACTED]’ report states that, as of that date, the Claimant was assessed as having a “primary diagnosis of emphysema;” chronic sinusitis; chronic Hepatitis C; cervical, thoracic, and lumbar disk degeneration; depression; anxiety; and social phobia (Ex. C-25).

11. On February 28, 2011 the Division’s Interim Assistance Medical Reviewer denied the Claimant’s application for Interim Assistance in a memorandum which stated in relevant part as follows (Exs. 2.001, 2.002):

[The Claimant’s application reported] neck and back pain, degenerative disk disease, chronic Hepatitis C, [and] depression with agoraphobia. Per [the] available medical records, [the disability] criteria [are] not met. [The Claimant’s GAF score] of 65 is indicative of mild psychiatric symptomology. No radiological or MRI evidence of a nerve root compromise in the spine. No indication of gross deformity to a joint resulting in marked impairment to fine and gross motor movements in both upper extremities or an ambulatory impairment requiring the use of a walker, two canes, or crutches. Hepatitis C without indication of end stage liver disease, bleeding varices, ascites, hepato-renal or hepato-pulmonary syndrome.

12. On March 3, 2011 the Claimant had an appointment for medication management with a behavioral health provider (Exs. C-21 – C-22). As of that date the Claimant was taking paxil, doxepin for insomnia, and fluticasone proprionate and ProAir for breathing/COPD. *Id.* His diagnoses were listed as social phobia and antisocial personality disorder. *Id.*

13. On March 28, 2011 the Claimant underwent a four (4) hour limited functional capacity evaluation (Exs. C-17 – C-20). The report of that assessment indicates in relevant part as follows:

a. A full assessment could not be performed because the Claimant’s diastolic blood pressure was elevated (Ex. C-17).

b. The Claimant reported pain in his left elbow, left ankle, right ribs, low back, and thoracic area, and that his bones ache with the weather (Exs. C-17 – C-18). The Claimant reported that his pain is worsened by lifting and by sitting for prolonged periods (Ex. C-18). The Claimant reported that pain medications and rest relieve his pain (Ex. C-18).

c. The Claimant has limitations in the range of motion of his upper body, including limits in the end range of shoulder elevation with pain on both sides, tight pectoralis muscles, pain in the left elbow, and tightness and limited movement at the cervico-thoracic junction (Ex. C-18).

d. The Claimant has limitations in mid-body or trunk including weak abdominal muscles, impaired posture, and very tight para-spinal muscles (Ex. C-19).

e. The Claimant has limitations in the range of motion of his lower body including the inability to perform a straight leg raise, a limited ability to stand on toes, decreased balance, and shakiness in walking on heels and toes (Ex. C-19).

f. The Claimant can walk on level ground, although his speed is that of an older man (Ex. C-19). The Claimant can climb and descend stairs (Ex. C-19).

g. The summary of the Claimant's assessment states that he has a spinal dysfunction, foot pain provoked by neural tension apparently related to sciatica, overall shakiness or tremor, consistent range of motion deficits in both shoulders, overall weakness in the trunk and legs, and impaired balance (Ex. C-19).

14. On March 31, 2011 the Claimant had an appointment with his treating physician Dr. [REDACTED] (Exs. C-6 – C-9). Dr. [REDACTED]' report from that appointment states in relevant part as follows:

a. The Claimant "has a history of significant degenerative disk disease in [his] cervical and lumbar spine" (Ex. C-6). "He had x-rays that showed significant degenerative disk disease" (Ex. C-6). The Claimant stated "that he has severe neck pain that seems to radiate down his arms," that "his arms feel weak on occasion," that "he also has low back pain," and that "he has pain that radiates down his left leg now" (Ex. C-6).

b. The Claimant "has an x-ray of his chest that showed COPD," and he also has allergic rhinitis (Ex. C-6).

15. On April 5, 2011 the Claimant had an appointment for medication management with a behavioral health provider (Exs. C-2 – C-3). As of that date the Claimant was taking paxil, doxepin for insomnia, pindolol for anxiety, tramadol for pain, and fluticasone proprionate and ProAir for breathing / COPD. *Id.* His diagnoses were listed as depression, anxiety, and antisocial personality disorder. *Id.*

II. The Claimant's Education and Work History.

16. The Claimant has a 10th grade education (Ex. 2.037). He has not obtained a G.E.D. (Ex. 2.037). He can understand, speak, read, and write the English language (Ex. 2.020, Claimant testimony).

17. Since high school, the Claimant has attended classes on electronics and computers through Avetech (Ex. 2.006). However, the Claimant's main area of vocational training has been in automotive diagnostics and repair (Claimant testimony). The Claimant has attended vocational training/trade school classes on the following automotive topics: auto repair, auto repair diagnostics, vehicle emission control systems, vehicle heating and air conditioning systems, engine cooling systems, vehicle oiling / lubrication systems, vehicle electrical systems, and vehicle brake systems (Ex. 2.020). At one time the Claimant was certified as a mechanic in 14 different automotive specialty areas (Claimant testimony).

18. Between approximately 1976 and 1995 the Claimant sometimes worked in the areas of roofing, plumbing, and heating (Claimant testimony). However, the jobs which the Claimant has held in the last 15 years are as follows (Exs. 2.018, 2.019):

a. Mechanic at a major car and truck dealership for six years. In this job the Claimant's duties included diagnosing problems in numerous vehicle systems, using all types of hand tools, air tools, jacks, air conditioning equipment, and tire balancing machines. The Claimant took customer repair orders and ordered parts. The Claimant repaired vehicle electrical systems, engine heating and cooling systems, engine oil systems, brake systems, and vehicle drive trains, and balanced tires. In this job the Claimant had to move, lift and/or carry cylinder heads, manifolds, other engine parts, transmissions, transfer cases, drive lines, brake parts, axles, tires, and diagnostic equipment. These items would often weigh 30 to 100 pounds. The Claimant had some supervisory responsibility over other employees, and was also required to write certain reports.

b. The Claimant once ran an automotive repair shop (Claimant testimony). He had supervisory authority with the ability to hire and fire personnel. *Id.*

c. Hotel Engineer. In this job the Claimant would receive incoming calls; take repair orders; assist customers; repair electrical, plumbing, heating, and vacuum systems; and diagnose and program television sets and games. The Claimant was required to lift and carry objects such as vacuums, tools, and electrical cords typically weighing 10 to 25 pounds. The Claimant had some supervisory responsibility over other employees, and was also required to write certain reports.

d. Tire man and mechanic at a service station. This was the Claimant's most recent job (in 2007). In this job the Claimant would open the service station for business, take calls and repair orders, order parts, pump gas, replace wiper blades, perform oil changes, repair tires, perform tire change-overs, and take out trash. The Claimant was required to lift and carry objects such as tools, tires, signs, and trash typically weighing 10 to 50 pounds. The Claimant had some supervisory responsibility over other employees, and was also required to write certain reports.

III. Hearing Testimony.

19. The Claimant testified in relevant part as follows:

a. He has pain that goes all the way down his back, all the way down his legs, and into his shoulders. His arms go numb. He now walks with a cane. He has hernias. He has hypertension and takes beta blockers for his heart. He has major anger management issues.

b. He can no longer perform his prior work as a mechanic.

c. He ran the parts section of an auto repair shop in the past. However, he does not believe he could work at an auto parts store because he cannot sit for very long.

d. He taught auto repair in the past. However, he does not believe he could teach auto repair now because he cannot sit for very long.

- e. He once ran the office of an auto repair shop, but his computer skills are limited.
20. The Division's Interim Assistance Medical Reviewer testified in relevant part as follows:
- a. With regard to "Step 1" of the SSA disability analysis, the Division does not dispute that the Claimant is not currently performing substantial gainful activity.
- b. With regard to "Step 2" of the SSA disability analysis, the Division does not dispute that the 12-month durational requirement is satisfied in this case.
- c. With regard to "Step 3" of the SSA disability analysis, the Claimant's impairments do not meet or medically equal the requirements of any "Listings" impairment. In particular, with regard to the Claimant's mental impairment(s), the criteria of Listing Section 12.06(a) are met, but the criteria of Listing Section 12.06(b-c) are not met.
- d. With regard to "Step 4" of the SSA disability analysis, the Division agrees that the Claimant cannot perform his past relevant work.
- e. With regard to "Step 5" of the SSA disability analysis, the Claimant can perform sedentary work, and Rule 201.11 of the SSA's "Grid" applies. Accordingly, the Claimant is not disabled on that basis.

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 proof⁴ 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 to approve their Supplemental Security Income application. A.S. § 47.25.255; 7 AAC § 40.170(a-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 Title 20 of the Code of Federal Regulations (CFR). Pursuant to 20 C.F.R. § 404.1505(a), "disability" is defined as

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 page 1064 (West Publishing, 5th Edition, 1979).

“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.”

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 C.F.R. § 404.1510. 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,” it is necessary to proceed to the next step of the disability analysis and determine whether the Claimant has a severe impairment.

Severe Impairment.

The second step in the analysis is to determine whether the applicant’s impairment is “severe” as defined by the applicable Social Security regulations. A severe impairment is one that significantly limits a person’s physical or mental ability to perform “basic work activities.” 20 C.F.R. § 404.1521(a); 20 C.F.R. § 416.920(c); 20 C.F.R. § 416.921(a). 20 C.F.R. § 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 C.F.R. § 416.908. Acceptable medical sources include licensed physicians and psychologists. 20 C.F.R. § 404.1513(a). A claimant's own statement of symptoms alone will not suffice. 20 C.F.R. § 416.908.

If the impairment is not severe, the applicant is not disabled. 20 C.F.R. § 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.

Duration.

The next step in the analysis is to determine whether the applicant's severe impairment has already lasted for a continuous period of at least twelve (12) months, or can be expected to last for a continuous period of at least twelve (12) months.⁶ 20 C.F.R. § 416.909. If the severe impairment does not satisfy this duration requirement, the applicant is not disabled. 20 C.F.R. § 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.

Severe Impairment That Meets or Equals The 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 C.F.R. Part 404, Subpart P, Appendix 1. The claimant bears the burden of establishing that his or 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). To meet a listing, an impairment must meet *all* of the listing's specified criteria. *Sullivan*, 493 U.S. at 530 ("an impairment that manifests only some of these criteria, no matter how severely, does not qualify").

If the applicant's severe impairment meets or medically equals the listing of impairments contained in the Social Security regulations located at 20 C.F.R. Part 404, Subpart P, Appendix 1, then the applicant is deemed disabled and no further inquiry is required. 20 C.F.R. § 416.920(a)(4)(iii). 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.

Capability of Performing Previous Relevant Work.

The next step is to determine whether the applicant's severe impairment prevents him or her from performing his or her previous relevant work. If the applicant is not prevented from performing his or her previous relevant work, the applicant is not disabled. 20 C.F.R. § 416.920(a)(4)(iv). If the applicant is prevented from performing his or her previous relevant work, it is necessary to proceed to the next step in the analysis and determine whether the applicant can perform any other work.

Capability of Performing Other Work.

Pursuant to 20 C.F.R. § 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 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. At this stage, however, the burden of proof shifts from the claimant to the agency. See 20 C.F.R. § 404.1520(a)(4)(v); 20 C.F.R. § 404.1562(c)(2); 20 C.F.R. § 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137, 144 (1987); *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir.1984); *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir.1988); *Smolen v. Chater*, 80 F.3d 1273,

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 C.F.R. § 416.920(a)(4)(ii), treats the durational requirement as part of the "step two" severity analysis.

1289 (9th Cir.1996); *Tackett v. Apfel*, 180 F.3d 1094, 1099 (1999); *Bustamante v. Massanari*, 262 F.3d 949, 953–954 (9th Cir.2001); *Valentine v. Comm'r Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir.2009).

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 or she is disabled. 20 C.F.R. § 416.920(a)(4)(v).

ANALYSIS

As an applicant for Interim Assistance benefits, the Claimant has the burden of proving, by a preponderance of the evidence, that his 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 benefits.

The impairments asserted by the Claimant or reflected by the medical records in this case are:

1. Chronic back and neck pain/cervicalgia/degenerative disk disease (Ex. 2.038), categorized under Social Security Administration (SSA) Impairment Listing No. 1.04 (Musculoskeletal System).
2. Abdominal/flank pain (Ex. 2.038), not categorized under any SSA Impairment Listing.
3. Chronic Hepatitis C (Ex. 2.038), categorized under SSA Impairment Listing No. 5.05 (Digestive System).
4. Hyperthyroidism (Ex. 2.038), categorized under SSA Impairment Listing No. 109.02 (Thyroid Disorders).
5. Chronic obstructive pulmonary disease (COPD) (Ex. C-31), categorized under SSA Impairment Listing No. 3.01 *et. seq.* (Respiratory System).
6. Emphysema (Ex. C-25), categorized under SSA Impairment Listing No. 3.01 *et. seq.* (Respiratory System).
7. Chronic sinusitis (Ex. C-25), categorized under SSA Impairment Listing No. 14.00 *et. seq.* (Immune System Disorders).
8. Nicotine dependence (Ex. 2.038), not categorized under any SSA Impairment Listing.
9. Chronic major depression (Ex. 2.038), categorized under SSA Impairment Listing No. 12.04.
10. Anxiety (Ex. C-25) and agoraphobia (Ex. 2.038), both categorized under SSA Impairment Listing No. 12.06.

11. Personality disorder, anti-social type (Exs. 2.04 – 2.011), categorized under SSA Impairment Listing No. 12.08.

These impairments must be analyzed to determine whether they satisfy the applicable Social Security disability criteria.

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 C.F.R. § 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’s vocational records indicate that he is not currently working, and that he had not worked since 2007 (Exs. 2.018, 2.019). This evidence was not disputed by the Division (DPA Medical Reviewer’s testimony). Accordingly, the Claimant has carried his burden and has proven, by a preponderance of the evidence, that he is not performing substantial gainful activity as defined by 20 C.F.R. § 404.1510.

II. Does The Claimant Have a Severe Impairment?

In order to avoid being found to be *not disabled* at this stage, the Claimant must prove that at least one of his impairments is medically severe pursuant to 20 C.F.R. § 416.920(c). A “severe impairment” is one that “significantly limits [a person’s] physical or mental ability to do basic work activities.” 20 C.F.R. §§ 404.1520(c) and 416.920(c).

20 C.F.R. § 416.921(b) defines “basic work activities.” That regulation states in relevant part:

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.

If the sole criterion for determining the severity of an impairment were the Claimant’s own testimony, he would qualify as severely impaired pursuant to 20 C.F.R. § 416.920(c) and 20 C.F.R. § 416.921(b). However, for purposes of a disability determination, a claimant's own statement of symptoms, by itself, will not suffice. 20 C.F.R. § 416.908. *Evidence from acceptable medical sources is necessary to establish the severity of an impairment.* 20 C.F.R. § 404.1513(a); *see also* 20 C.F.R. § 416.908. Does the medical evidence establish that the Claimant’s impairments significantly limit his physical or mental ability to do basic work activities?

The criteria used by the Social Security disability regulations to analyze physical impairments are different than the criteria used to analyze mental impairments, as explained below. Accordingly, the Claimant’s alleged physical and mental impairments must be analyzed separately.

A. The Claimant's Physical Impairments.

1. The Claimant's Neck and Back Pain, Cervicalgia, and Degenerative Disk Disease (DDD).

On January 20, 2011 the Claimant's treating physician assessed the Claimant as having chronic mid/low back pain resulting from *mild* degenerative disk disease (Ex. 2.038). However, two months later, on March 31, 2011, the Claimant's treating physician reported that the Claimant "has a history of *significant* degenerative disk disease in [his] cervical and lumbar spine" (Ex. C-6), and that his x-rays showed "*significant* degenerative disk disease" (Ex. C-6). Accordingly, the medical evidence as to the Claimant's neck and back pain/DDD/cervicalgia is somewhat ambiguous. However, the Claimant's March 28, 2011 functional capacity evaluation (Exs. C-17 – C-20) states that the Claimant has "foot pain provoked by neural tension apparently related to sciatica, overall shakiness or tremor, consistent range of motion deficits in both shoulders, overall weakness in the trunk and legs, and impaired balance" (Ex. C-19). Accordingly, a preponderance of the evidence indicates that the Claimant's ability to perform basic work activities such as walking, standing, lifting, pushing, pulling, reaching, carrying, or handling are significantly limited. The Claimant's neck and back pain/DDD/cervicalgia therefore qualify as "medically severe" as defined by 20 C.F.R. §§ 404.1520(c) and 416.920(c).

2. The Claimant's Abdominal/Flank Pain.

The record does not reflect a medical cause for the Claimant's complaints of abdominal or flank pain. Similarly, the record does not reflect that the Claimant's asserted abdominal or flank pain affects the Claimant's ability to perform basic work activities. Accordingly, the Claimant's abdominal or flank pain does not qualify as "medically severe" as defined by 20 C.F.R. §§ 404.1520(c) and 416.920(c).

3. The Claimant's Hepatitis C.

The Claimant's treating physician's report dated January 20, 2011 (Exs. 2.036 – 2.039) states in relevant that the Claimant has had "Hepatitis C for 15 to 20 years", but that he "has never had a liver ultrasound," and that he "has never had labs." Similarly, the record does not reflect that the Claimant's Hepatitis C affects the Claimant's ability to perform basic work activities. Accordingly, the Claimant's Hepatitis C is not "medically severe" as defined by 20 C.F.R. §§ 404.1520(c) and 416.920(c).

4. The Claimant's Hyperthyroidism.

The Claimant has been diagnosed as having hyperthyroidism (Ex. 2.038). However, there is no medical evidence in the record as to the Claimant's symptoms, and the record does not reflect that the Claimant's hyperthyroidism affects the Claimant's ability to perform basic work activities. Accordingly, the Claimant's hyperthyroidism is not "medically severe" as defined by 20 C.F.R. §§ 404.1520(c) and 416.920(c).

5. The Claimant's Chronic Obstructive Pulmonary Disease (COPD).

The Claimant has been diagnosed as having chronic obstructive pulmonary disease (COPD) (Ex. C-31). The Claimant takes fluticasone propionate and ProAir for his COPD (Exs. C-21 – C-22). However, there is no medical evidence in the record as to the Claimant's symptoms, and the record does not reflect that the Claimant's COPD affects his ability to perform basic work activities. Accordingly, the Claimant's COPD is not "medically severe" as defined by 20 C.F.R. § 404.1520(c).

6. The Claimant's Emphysema.

The Claimant has been diagnosed as having emphysema (Ex. C-25). However, there is no medical evidence in the record as to the Claimant's symptoms, and the record does not reflect that the Claimant's emphysema affects his ability to perform basic work activities. Accordingly, the Claimant's emphysema is not "medically severe" as defined by 20 C.F.R. §§ 404.1520(c) and 416.920(c).

7. The Claimant's Chronic Sinusitis.

The Claimant has been diagnosed as having chronic sinusitis (Ex. C-25). However, there is no medical evidence in the record as to the Claimant's symptoms, and the record does not reflect that the Claimant's sinusitis affects his ability to perform basic work activities. Accordingly, the Claimant's sinusitis is not "medically severe" as defined by 20 C.F.R. §§ 404.1520(c) and 416.920(c).

8. The Claimant's Nicotine Dependence.

The Claimant has been diagnosed as having nicotine dependence (Ex. 2.038). However, there is no medical evidence in the record as to the Claimant's symptoms, and the record does not reflect that the Claimant's nicotine dependence affects his ability to perform basic work activities. Accordingly, the Claimant's nicotine dependence is not "medically severe" as defined by 20 C.F.R. § 404.1520(c).

9. Summary – The Claimant Has One Severe Physical Impairment.

In summary, the Claimant's abdominal/flank pain, Hepatitis C, hyperthyroidism, COPD, emphysema, sinusitis, and nicotine dependence do not qualify as "medically severe" as defined by 20 C.F.R. §§ 404.1520(c) and 416.920(c). However, the medical records do provide an objective medical basis for the Claimant's assertion that his ability to do basic work activities such as walking, standing, sitting, and lifting (20 C.F.R. § 416.921(b)) is limited because of his neck and back pain/cervicalgia/degenerative disk disease, and the pain, weakness, and numbness associated therewith. Accordingly, the Claimant has carried his burden and proven, by a preponderance of the evidence, that he has a "severe impairment" as defined by 20 C.F.R. § 404.1520(c) and 20 C.F.R. § 416.920(c).

B. The Claimant's Mental Impairments.

Mental impairments are evaluated under 20 C.F.R. § 404.1520a and 20 C.F.R. § 416.920a, which regulations are essentially identical. 20 C.F.R. § 404.1520a provides in relevant part as follows:

(c) Rating the degree of functional limitation. . . .

(3) We have identified four broad functional areas in which we will rate the degree of your functional limitation: Activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. *See* 12.00C of the Listing of Impairments.

(4) When we rate the degree of limitation in . . . (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: None, mild, moderate, marked,

and extreme. When we rate the degree of limitation in . . . [episodes of decompensation], we will use the following four-point scale: None, one or two, three, four or more. The last point on each scale represents a degree of limitation that is incompatible with the ability to [work].

(d) Use of the technique to evaluate mental impairments. After we rate the degree of functional limitation . . . we will determine the severity of your mental impairment(s).

(1) If we rate the degree of your limitation in the first three functional areas as “none” or “mild” and “none” in the fourth area, we will generally conclude that your impairment(s) is not severe, unless the evidence otherwise indicates that there is more than a minimal limitation in your ability to do basic work activities (*see* § 404.1521).

Thus, pursuant to 20 C.F.R. § 404.1520a and 20 C.F.R. § 416.920a, the next step is to (1) rate the degree to which the Claimant’s mental impairments affect his activities of daily living, his social functioning, and his concentration, persistence, or pace; and (2) determine the extent to which the Claimant has episodes of decompensation.

1. Do the Claimant’s Mental Impairments Restrict His Activities of Daily Living?⁷

The Claimant has reported to his doctors that he has a poor mood, a poor memory, a fear of crowds, anger management issues, and that he cannot hold a job because he cannot be around people (Exs. 2.036 – 2.039). However, there is no evidence in the record that the Claimant’s chronic major depression (Ex. 2.038), anxiety (Ex. C-25), agoraphobia (Ex. 2.038), and/or personality disorder, anti-social type (Exs. 2.04 – 2.011), prevent him from performing his activities of daily living. Accordingly, the degree of limitation on the Claimant’s ability to perform his activities of daily living must be characterized as “none” (1 on a scale of 1-5).

2. Do the Claimant’s Mental Impairments Restrict His Social Functioning?⁸

The Claimant testified that his poor mood and anger management issues make it difficult for him to hold a job because he cannot be around people. However, the Claimant’s psychiatric assessment dated

⁷ The Social Security Regulations define “activities of daily living” as including “adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for your grooming and hygiene, using telephones and directories, and using a post office.” 20 C.F.R., Part 404, Subpart P, Appendix 1, Section 12.00(C)(1).

⁸ The Social Security Regulations define “social functioning” in relevant part as follows (20 CFR, Part 404, Subpart P, Appendix 1, Section 12.00(C)(2):

Social functioning refers to your capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. Social functioning includes the ability to get along with others You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others’ feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority . . . or cooperative behaviors involving coworkers.

August 3, 2010 (Exs. 2.004 – 2.011) indicates a Global Assessment of Function (GAF) score of 65. The Claimant’s GAF score represents his psychiatrist’s opinion that the Claimant’s mental impairments have only a *mild* adverse effect on his social functioning (see footnote 3, above). Accordingly, the degree of limitation on the Claimant’s social functioning must be characterized as “mild” (1-2 on a scale of 1-5).

3. Do Claimant’s Mental Impairments Restrict His Concentration, Persistence, etc.?⁹

The Claimant’s August 3, 2010 psychiatric assessment (Exs. 2.004 – 2.011) indicates that the Claimant had some memory problems following a traumatic brain injury in February 2009. However, the Claimant’s psychiatrist concluded that, as of the date of his report, the Claimant’s memory was “unimpaired” and that his judgment was “adequate . . . in terms of simple everyday practical matters.” *Id.* There is no other evidence in the record that the Claimant’s mental impairments otherwise adversely affect his concentration, persistence, or pace. Accordingly, the degree of limitation on the Claimant’s concentration, persistence, or pace must be characterized as “mild” (1-2 on a scale of 1-5).

4. Has the Claimant Had Recent Episodes of Decompensation?¹⁰

The Claimant’s August 3, 2010 psychiatric assessment (Exs. 2.004 – 2.011) indicates that the Claimant had “one psychiatric hospitalization . . . for three days in 1994”, but that, otherwise, the Claimant “has not been admitted to residential treatment care for any form of “mental disorder,” although he has had structured “sober house” stays as part of his extensive history of involvement in substance abuse treatment.” There is no evidence in the record of any other episodes of decompensation. In summary, the Claimant’s only episode of decompensation occurred 17 years ago – too long ago to be relevant to any determination of the Claimant’s current level of mental impairment. Accordingly, the degree of the Claimant’s decompensation must be graded as “none” (1 on 20 C.F.R. § 404.1520a’s scale of 1-4).

5. Summary – The Claimant’s Mental Impairments Do Not Qualify as Severe.

1. The Claimant scored a “none” (1 out of 5) with regard to “activities of daily living.”
2. The Claimant scored “mildly impaired” (1-2 out of 5) with regard to “social functioning.”

⁹ The Social Security Regulations define “concentration, persistence, or pace” in relevant part as follows (20 C.F.R., Part 404, Subpart P, Appendix 1, Section 12.00(C)(3):

Concentration, persistence, or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings [M]ajor limitations in this area can often be assessed through clinical examination or psychological testing

¹⁰ The Social Security Regulations define “episodes of decompensation” in relevant part as follows (20 CFR, Part 404, Subpart P, Appendix 1, Section 12.00(C)(4):

Episodes of decompensation are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two). Episodes of decompensation may be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (e.g. hospitalizations, placement in a halfway house, or a highly structured and directing household); or other relevant information in the record about the existence, severity, and duration of the episode.

3. The Claimant scored “mildly impaired” (1-2 out of 5) with regard to “concentration, persistence, and pace.”

4. The Claimant scored “none” (1 out of 4) with regard to “episodes of decompensation.”

Were the Claimant’s average impairment rating under 20 C.F.R. § 404.1520a either “marked” or “extreme,” the Claimant’s mental impairments could reasonably be rated as “severe” pursuant to 20 C.F.R. § 416.920(c). However, where (as here) a claimant’s average impairment rating under 20 C.F.R. § 404.1520a is “mild,” the Claimant’s mental impairments simply cannot be rated “severe” pursuant to 20 C.F.R. § 416.920(c).

In summary, the Claimant did not carry his burden of proof and failed to prove, by a preponderance of the evidence, that his depression (categorized under SSA Impairment Listing No. 12.04); anxiety and agoraphobia (both categorized under SSA Impairment Listing No. 12.06); or personality disorder, anti-social type (categorized under SSA Impairment Listing No. 12.08), constitute “severe impairments” as defined by 20 C.F.R. §§ 404.1520(c), 416.920(c), and 416.921(b).

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

The next step, pursuant to 20 C.F.R. § 416.909, is to decide whether or not the Claimant’s severe impairments – (his neck and back pain/cervicalgia/degenerative disk disease, and the pain, weakness, and numbness associated therewith) - have lasted, or can be expected to last, for a continuous period of at least twelve (12) months.

The Claimant’s treating physician concluded on January 20, 2011 that the Claimant had back pain for “about 5 years” (i.e. since 1995 or 1996) (Exs. 2.036 – 2.039). Further, the Division did not contest that the Claimant satisfied the 12-month durational requirement. Accordingly, the Claimant has proven, by a preponderance of the evidence, that his neck and back pain/cervicalgia/degenerative disk disease, and the pain, weakness, and numbness associated therewith, have lasted, or can be expected to last, for a continuous period of at least twelve (12) months.

IV. Do the Claimant’s Severe 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 C.F.R. Part 404, Subpart P, Appendix 1. The Claimant bears the burden of establishing, by a preponderance of the evidence, that his impairments satisfy the requirements of a “Listings” impairment. *See* Principles of Law, above.

The Social Security disability system classifies the Claimant’s neck and back pain/cervicalgia/degenerative disk disease under the “Musculoskeletal” listing. 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.00 *et. seq.* Section 1.04 requires in relevant part as follows:

1.04 Disorders of the spine (e.g., . . . osteoarthritis, degenerative disc disease, facet arthritis . . .), resulting in compromise of a nerve root . . . 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.

The evidence in the record indicates that the Claimant's neck and back pain/cervicalgia/degenerative disk disease satisfies *some* of the criteria of Section 1.04A (the Claimant has some limitation of motion of the spine, some sensory loss, and an inability to perform the straight-leg raising test – see Exs. C18, C19). However, there is no medical evidence of compromise of a nerve root, nerve root compression, muscle atrophy, or reflex loss. Similarly, there is no medical evidence of spinal arachnoiditis or lumbar spinal stenosis. Accordingly, the Claimant's neck and back pain/cervicalgia/degenerative disk disease fails to satisfy all the required elements of Section 1.04.

The Claimant's neck and back pain/cervicalgia/degenerative disk disease likewise fails to satisfy the *functional* requirements of Section 1.04. Although the Claimant has difficulty walking very far, the Claimant did not assert that he cannot walk without the use of a walker, two crutches, or two canes (see Exs. 2.036 – 2.039, C18, and C19). Accordingly, the Claimant's neck and back pain/cervicalgia/degenerative disk disease does not meet the "inability to ambulate" requirement of the Social Security Administration's Listing of Impairments, Sections 1.02¹¹ and 1.04.

In summary, the Claimant failed to prove, by a preponderance of the evidence, that his severe impairments – (neck and back pain/cervicalgia/degenerative disk disease) – alone or in combination - meet the specific requirements of the Social Security Administration's Listing of Impairments (20 C.F.R. Part 404, Subpart P, Appendix 1).

¹¹ Listing Section 1.00(B)(2)(b), titled "What We Mean by Inability to Ambulate Effectively," provides in relevant part as follows:

(1) Definition. Inability to ambulate effectively means an extreme limitation of the ability to walk Ineffective ambulation is defined generally as having insufficient lower extremity functioning . . . to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities

(2) To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living [E]xamples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail

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

The next step is to determine whether the Claimant's impairments prevent him from performing his previous relevant work. If the Claimant is not prevented from performing his previous relevant work, he is not disabled. 20 C.F.R. § 416.920(a)(4)(iv). If, however, the Claimant can no longer perform his 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.¹³ See 20 C.F.R. § 404.1545(a)(5) and 20 C.F.R. § 404.1560(b)(2). However, in this case, the Division's Interim Assistance Medical Reviewer agreed that the Claimant could no longer perform his prior, physical work as a mechanic (*see* hearing testimony and Exs. 2.001, 2.002). Accordingly, it is necessary to proceed to the final step of the disability analysis and to determine whether the Claimant can perform any work.

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

Pursuant to 20 C.F.R. § 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 C.F.R. § 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 that 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 step five. See *Thompson v. Sullivan*, 987 F.2d 1482, 1491 (10th Cir. 1993).

B. The Division Can Meet its Burden of Proof by Using "The Grids".

In many circumstances a decision on whether a claimant is disabled can be made using the Social Security Administration's Medical-Vocational Guidelines (located at 20 CFR, Part 404, Subpart P, Appendix 2). These guidelines, known as "the Grids," are used to evaluate the claimant's age, education, past work experience, and residual functional capacity, in order to determine whether the claimant is disabled.

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 C.F.R. § 404.1520(d); *Fargnoli 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 C.F.R. § 404.1545(a)(3). The State of Alaska's Interim Assistance regulations do not address this.

“If [a claimant's] impairments are exertional (affecting the ability to perform physical labor), the Commissioner [in this case the Division] may carry [its] burden by referring to the medical-vocational guidelines or ‘grids,’ which are fact-based generalizations about the availability of jobs for people of varying ages, educational backgrounds, and previous work experience, with differing degrees of exertional impairment.” *Holley v. Massanari*, 253 F.3d 1088, 1093 (8th Cir.2001).

The Claimant’s impairments in this case are primarily exertional. *See* functional capacity evaluation dated March 28, 2011 (Exs. C-17 – C-20). Accordingly, Rule 201 of “the Grids” would apply (“Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s)”). The specific sub-rule that applies is Rule 201.11. According to that rule, where (as here) a person’s age is between 50 – 54 years, the person has a limited education (has not graduated from high school), and was previously engaged in skilled employment (here as an automobile mechanic), the person is deemed *not* to be disabled.

C. Summary – The Claimant is Not Disabled Based on “The Grids”.

In summary, the Claimant proved that he is not employed, that he has a severe impairment, that his severe impairment has lasted or can be expected to last for at least twelve months, and that he can no longer perform his prior work. At that point, the burden of proof shifted to the Division. The Division then proved, using “the Grids,” that the Claimant is deemed capable of performing sedentary work. The Claimant is therefore deemed not to be disabled on this basis.

CONCLUSIONS OF LAW

1. The Claimant carried his burden and proved, by a preponderance of the evidence, that:
 - a. He is not currently engaged in substantial gainful activity as defined by 20 C.F.R. § 404.1510.
 - b. His neck and back pain/cervicalgia/degenerative disk disease (SSA Impairment Listing Nos. 1.02 and 1.04) constitute medically severe impairments as defined by 20 C.F.R. § 416.920(c) and 20 C.F.R. § 416.921(b).
 - c. His neck and back pain/cervicalgia/degenerative disk disease (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 C.F.R. § 416.909 and 20 C.F.R. § 416.920(a)(4)(ii).
2. The Claimant did not carry his burden and failed to prove, by a preponderance of the evidence, that his neck and back pain/cervicalgia/degenerative disk disease (SSA Impairment Listing Nos. 1.02 and 1.04) meet the specific requirements of the Social Security Administration’s applicable Listing of Impairments.
3. The Claimant carried his burden and proved, by a preponderance of the evidence, that he can no longer perform his prior work as a result of the impairments listed in Paragraphs 1 - 2, above.
4. The Division carried its burden and proved, by a preponderance of the evidence, that the Claimant can still perform sedentary work.

5. The Division was therefore correct when, on March 2, 2011, it denied the Claimant's application for Interim Assistance benefits submitted on or about December 3, 2010, because the Claimant did not meet the Interim Assistance Program's disability requirements.

DECISION

The Division was correct when it denied, on or about March 2, 2011, the Claimant's application for Interim Assistance benefits submitted on or about December 3, 2010.

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

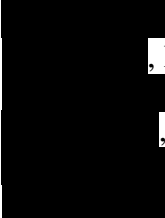
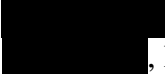
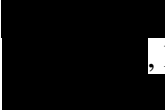


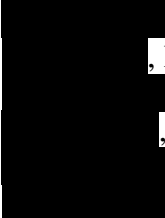
DATED this 22nd day of August, 2011.

/signed/
Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on August 22, 2011 true and correct copies of this 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

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