

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

In the Matter of)	
)	OAH No. 13-1137-APA
K X)	Division No.
_____)	

FAIR HEARING DECISION

I. Introduction

K X applied for Interim Assistance on July 11, 2013.¹ A disability adjudicator employed by the Division of Public Assistance (Division) concluded that Mr. X was severely physically impaired, but that he did not qualify for Interim Assistance. The Division notified Mr. X that his application was denied. He requested a hearing.

Mr. X's hearing was held on September 12, 2013. Mr. X represented himself and testified on his own behalf. Jeff Miller, Public Assistance Analyst with the Division, represented the Division. Jamie Lang, the Division's disability adjudicator, testified on behalf of the Division.

Based on the record and after careful consideration, Mr. X is severely physically impaired and his impairment meets the 12-month durational requirement. However, Mr. X's physical impairment does not meet or equal the Social Security disability listings and he did not establish that he could not perform his previous relevant work. Therefore, Mr. X did not prove by a preponderance of the evidence that he satisfies the Interim Assistance program's eligibility requirement that he be "likely to be found disabled by the Social Security Administration."² As a result, the Division's decision denying his Interim Assistance application is affirmed.

II. Facts

The following facts were established by a preponderance of the evidence: Mr. X was 50 years old at the time of his application; he is currently 51.³ He worked in sales and management positions from 2002 to 2011. He was last employed in October 2011. He has a high school diploma and is literate in English.⁴

¹ Ex. 2.
² See 7 AAC 40.180(b)(1).
³ Ex. 1.
⁴ X testimony.

Mr. X was examined by T E, MD, who completed and signed a “Preliminary Examination for Interim Assistance” form on July 29, 2013. That form indicates that Mr. X’s diagnoses were hypertension, chronic pain, obesity, osteoarthritis of the right hip, and degenerative changes in his lumbar spine with central channel stenosis, and he was not expected to recover from the condition.⁵ Dr. E’s examination notes state that Mr. X’s blood pressure was 112/68 (*i.e.*, controlled), that he has moderate to severe hip osteoarthritis, and “lumbar osteoarthritis, severe in facets, and with spinal stenosis.”⁶ As of July 6, 2013, “he [did] not appear to have cauda equina syndrome.”⁷ X has had several surgeries; right knee (debridement), left knee (lateral release), both shoulders (bone spur removal), right hip (scope), right wrist fracture, and gastric bypass.⁸

There is no indication in the medical records showing that Mr. X’s ability to walk, sit or stand is compromised. The records show he has issues with chronic pain and muscle weakness with both arms, but no inability to use the arms.⁹ Mr. X testified that he has neck pain, has difficulty sitting and walking, and that he has fallen because his left leg has given out on him. He is able to lift items, but then feels the effects for the next several days.¹⁰

Jamie Lang, the Division’s medical reviewer, determined that Mr. X was not likely to meet the Social Security Administration’s (SSA) disability criteria. She reviewed each of the diagnoses contained in the “Preliminary Examination for Interim Assistance” form to determine whether any of those conditions qualified him as disabled. She concluded that although he was severely impaired by his conditions, he did not meet or equal any of the applicable Social Security disability listing requirements, and that he therefore did not qualify for Interim Assistance.¹¹ On that basis, the Division denied Mr. X’s application for Interim Assistance.

III. Discussion

A. The Five Step Disability Determination Process

The Adult Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”¹² Applicants who are under the age of 65 years are

⁵ Ex. 3.65.

⁶ Ex. 3.15.

⁷ Ex. 3.40.

⁸ Ex. 3.24.

⁹ *See e.g.*, Exs. 3.17, 3.20, 3.21, 3.26.

¹⁰ X testimony.

¹¹ Exs. 3.1 – 3.2; Lang testimony.

¹² AS 47.25.430.

required to apply and qualify for federal Supplemental Security Income (SSI) benefits.¹³ Once an applicant is approved for SSI benefits, he or she is then eligible to receive Adult Public Assistance benefits.¹⁴

Interim Assistance is a monthly payment of \$280 that is provided by the State to Adult Public Assistance applicants while they are waiting for the SSA to approve their SSI application.¹⁵ In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”¹⁶ An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.¹⁷

The SSA uses a five-step evaluation process to make its disability determinations.¹⁸ Each step is considered in order.¹⁹ In 2012, a Commissioner’s level decision held that the Division should only use the first three steps of the SSA disability determination process, and not the full five-step evaluation process, in deciding whether an applicant qualifies for Interim Assistance.²⁰ However, that decision was appealed to the Superior Court. The Superior Court “vacate[d] the Commissioner’s decision and remand[ed] [the case] to the Department for a disposition in accordance with requirements set forth by the SSA 5-part test.”²¹ The Superior Court decision is persuasive authority for the point that the full five-step evaluation process should be used in Interim Assistance cases. Accordingly, this decision will use the full five-step evaluation process instead of stopping after the third step.

Each step of the five-step evaluation process is considered in order, and if the SSA finds the applicant either disabled or not disabled at any step, it does not consider subsequent steps.²²

¹³ 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the SSI standards are not required to apply for SSI benefits. 7 AAC 40.170(a).

¹⁴ 7 AAC 40.030(a); 7 AAC 40.170(a).

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

¹⁶ 7 AAC 40.180(b)(1).

¹⁷ 2 AAC 64.290(e).

¹⁸ 20 C.F.R. § 416.920.

¹⁹ Under the SSA disability determination process, an applicant who satisfies both steps one and two goes on to step three. An applicant who does not satisfy step three goes on to step four and possibly step five. 20 C.F.R. § 416.920(a)(4).

²⁰ *In re M. H.*, OAH Case No. 12-0688-APA. (Commissioner of Health and Social Services 2012) <http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf> at 2.

²¹ *Gross v. State, Dept. of Health and Social Services*, Anchorage, Alaska Superior Court Case No. 3AN-12-0938 CI (Marston, J., September 26, 2013). While a Petition for Review is currently pending in the Alaska Supreme Court, the Superior Court decision has not been stayed. (Alaska Supreme Court Case No. S-15339).

²² 20 C.F.R. § 416.920(a)(4).

The first step in this process looks at the applicant's current work activity. If the applicant is performing "substantial gainful activity," the SSA will find the applicant is not disabled.²³

At step two, the SSA considers the severity and duration of the applicant's impairment. Medical evidence, which consists of "signs, symptoms, and laboratory findings, not only [the applicant's] statement of symptoms," is required to establish an applicant's impairment.²⁴ In order to be considered disabled, the impairment or combination of impairments must be severe,²⁵ must be expected to result in death, or must have lasted or be expected to last at least 12 months.²⁶ If the impairment is not severe or does not meet the duration requirement, the applicant is not disabled. If the impairment is severe and meets the duration requirements, it is necessary to proceed to step three.

The third step requires the evaluation of whether the impairment meets or equals one of the disability listings adopted by the SSA. By regulation, the Division does not use the most current version of the SSA disability listings. Instead, it is required to use the "Social Security Administration disability criteria for the listings of impairments described in 20 C.F.R. 404, Subpart P, Appendix 1, as revised as of April 1, 2005, and adopted by reference."²⁷ If an applicant's impairment meets or equals one of the applicable SSA disability listings, the applicant is disabled²⁸ and qualifies for Interim Assistance. If the applicant's impairment does not meet or equal one of the SSA listings, it is necessary to move on to step four.

At step four, which applies to applicants who have been determined not to be disabled at step three, the SSA looks at the applicant's capacity for work and past relevant work. If the person is able to perform his or her past relevant work, he or she is not disabled.²⁹ If the person is unable to perform his or her past relevant work, it is necessary to proceed to step five.

Step five considers the question whether the applicant is capable of performing other work. Answering this question requires the application of the Social Security medical vocational guidelines that include the evaluation of the applicant's residual functional capacity, age,

²³ 20 C.F.R. § 416.920(a)(4)(i).

²⁴ 20 C.F.R. § 416.908.

²⁵ A severe impairment is one that "significantly limits [a person's] physical or mental ability to do basic work activities." 20 C.F.R. § 416.920(c).

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

²⁷ 7 AAC 40.180(b)(1)(B). The SSA disability listings are located at 20 C.F.R. Part 404, Subpart P, Appendix 1. The version of those listings in effect as of April 1, 2005 is located online at <http://www.gpo.gov/fdsys/pkg/CFR-2005-title20-vol2/pdf/CFR-2005-title20-vol2-part404-SubpartP-app1.pdf>

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

²⁹ 20 C.F.R. § 416.920(a)(4)(iv).

education, English literacy, and previous work experience.³⁰ If the applicant is not capable of performing other work, he or she is disabled.³¹

B. Application of the Five Step Process

The Division's decision to deny Mr. X's application was based on the review by Jamie Lang, its medical reviewer. She determined that Mr. X was not working and satisfied step one of the Social Security disability analysis. She determined that Mr. X also satisfied step two of the Social Security disability analysis (his conditions caused him to be severely impaired and they had lasted or were expected to last for at least 12 months). However, she determined that his conditions did not satisfy step three because they did not meet or equal the appropriate disability listings.

Mr. X's diagnoses are hypertension, chronic pain, obesity, osteoarthritis, both lumbar and hip, and degenerative changes in his lumbar spine with central channel stenosis. There is no evidence that his hypertension is acute. His obesity is examined only in terms of functional limitations. The remainder of his diagnoses, including chronic pain, are musculoskeletal in nature.

At step three, in order to meet the general listing for spinal conditions, there must be medical evidence showing he has a "compromise of the nerve root (including the cauda equina) or the spinal cord."³² The only medical evidence on this point is a July 6, 2013 note that indicates he does not have cauda equina syndrome. As a result, he does not meet or equal the applicable SSA disability listing due to his spinal conditions.

Mr. X's remaining musculoskeletal issues fall within the SSA disability listing for major dysfunction of joints: "chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s)."³³ However, in order to meet or equal the applicable listing, he would need to be unable to "perform fine and gross movements effectively" in both upper extremities, be unable to walk without the use of a walker or two crutches or two canes, or be unable "to walk a block at a reasonable pace on rough or uneven surfaces."³⁴ While there is evidence of muscle weakness in both upper extremities, there is no medical evidence that he is unable to use both upper extremities. Indeed, Mr. X testified that he could lift things. While Mr.

³⁰ See 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 201.

³¹ 20 C.F.R. § 416.920(a)(4)(v).

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

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

³⁴ 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.00B2b and c; § 1.02A and B.

X testified he had trouble walking and that his left leg had given out on him, there is no medical evidence in the record showing that his ability to walk is compromised or that he requires either two canes or a walker. Consequently, Mr. X does not meet or equal the applicable SSA disability listing.

If a person does not meet or equal an SSA disability listing, the next step is to determine whether he or she can perform his or her previous relevant work. Mr. X's work from 2002 forward was in sales and management. There is a dearth of medical evidence showing that he is unable to perform those job skills. His testimony was that he cannot sit or walk. While Mr. X undeniably experiences chronic pain, there is no medical evidence showing that he cannot sit at a desk, or walk, or stand in a normal office sales environment or management environment.

IV. Conclusion

Mr. X has a number of long-term physical conditions which cause him pain and limit his physical functioning. However, he did not meet his burden of proving that he was unable to perform his previous relevant work, which is a requirement for Interim Assistance eligibility. As a result, the Division's decision to deny his application for Interim Assistance benefits is **AFFIRMED**.

DATED this 21st day of November, 2013.

Signed

Kay L. Howard
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 23rd day of December, 2013.

By: *Signed*

Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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