

Office of Hearings and Appeals  
3601 C Street, Suite 1322  
P. O. Box 240249  
Anchorage, AK 99524-0249  
Ph: (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-138  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
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**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] [REDACTED] (Claimant) applied for Interim Assistance benefits on February 1, 2011. (Ex. 1) On March 24, 2011, the Division sent the Claimant notice his Interim Assistance application was denied. (Ex. 4) The Claimant requested a Fair Hearing on March 30, 2011. (Ex. 5)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on May 10 and June 1, 2011. The Claimant was present telephonically for the hearing. He did not testify. The Claimant was represented by his mother [REDACTED] [REDACTED]; she attended telephonically and testified on the Claimant's behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person; he represented the Division and testified on its behalf. [REDACTED], Health Program Manager II with the Division, attended telephonically and testified on behalf of the Division.

The record was left open after the hearing, until June 10, 2011, for the Claimant to submit additional information and for the Division to respond. The Claimant's information was received on June 1, 2011. (Ex. A) The Division did not submit a response.

**ISSUE**

Was the Division correct when it denied the Claimant's February 1, 2011 Interim Assistance application on March 24, 2011?

**SUMMARY OF DECISION**

The Claimant experiences severe impairments, specifically colpocephaly, partial genesis of the corpus callosum, Amnesic Disorder, Cognitive Disorder, Mathematics Disorder, and a below average full

scale IQ of 82. His severe impairments are not presumptively disabling. They do not meet or equal the Social Security listings of impairments contained in 20 CFR 404 Subpart P, Appendix 1. Nor do they prevent the Claimant from doing his previous relevant work. As a result, the Claimant does not satisfy the Interim Assistance program's eligibility requirement, set forth in 7 AAC 40.180(b)(1), that he is "likely to be found disabled by the Social Security Administration." The Division was therefore correct when it denied the Claimant's February 1, 2011 Interim Assistance application.

### **FINDINGS OF FACT**

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

1. The Claimant is currently 23 years old (birth date [REDACTED]). (Ex. 2.13) He left high school early and went back to high school at the age of 20, where he "received special education assistance" and was able to complete high school. (Ex. 2.15; Ms. [REDACTED] testimony)
2. The Claimant has limited work experience. It consists of working as a laborer, working in three separate fast food restaurants for short periods of time, and a nine month stint as an attendant in a gas station/convenience store. (Exs.2.15, A, p. 1; Ms. [REDACTED] testimony)
3. The Claimant's nine month job as the gas station/convenience store attendant consisted of primarily stocking and custodial tasks, along with limited customer service. (Ex. A, pp. 2 - 3) The Claimant "could not stay on task," was unable to follow directions, and required monitoring. (Ex. A, p. 1; Ms. [REDACTED] testimony) The job ended on January 27, 2008; this was the last time Claimant worked. *Id.* He was terminated from that position for theft,<sup>1</sup> not for inadequate job performance. *Id.*
4. Dr. [REDACTED], Ph.D., a psychologist with a board certification in Clinical Neuropsychology, conducted a neuropsychological evaluation of the Claimant on December 8, 2010. (Exs. 2.13 – 2.21) Dr. [REDACTED]'s written neuropsychological evaluation report states the Claimant experiences the following conditions:
  - a. He has colpocephaly,<sup>2</sup> which appears to be related to partial genesis of his corpus callosum.<sup>3</sup> (Ex. 2.14)
  - b. He has a seizure disorder that is controlled, for which he takes Dilantin. (Exs. 2.13, 2.20)

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<sup>1</sup> There is an inconsistency in the evidence regarding whether the Claimant was fired or quit. Ms. [REDACTED] testified the Claimant quit when he knew he would be fired. However, the business manager's written statement says that the Claimant was fired. (Ex. A, p. 1) Because the manager had direct knowledge of the incident, rather than Ms. [REDACTED]'s second hand account, the manager's written statement is controlling.

<sup>2</sup> Colpocephaly is the "enlargement of the occipital horns of the lateral ventricles, often accompanied by mental retardation, seizures, and visual disturbances that result of hypoplasia of the optic nerve." *Dorland's Illustrated Medical Dictionary*, p. 395 (31st Edition 2007)

<sup>3</sup>The corpus callosum is a portion of the brain. *See Dorland's Illustrated Medical Dictionary*, p. 425 (31st Edition 2007)

- c. His full scale IQ score is 82. (Ex. 2.17)
- d. His “[m]otor functions are somewhat limited, especially on fine motor dexterity tasks or other tasks requiring very quick motor responses.” (Ex. 2.20)
- e. His “memory functioning is an area of very serious limitation.” (Ex. 2.18) He has diagnoses of Amnesic disorder, not otherwise specified,<sup>4</sup> Cognitive disorder “- slowed speed of information processing and speed of responding, as well as poor visual-spatial planning skills,” and Mathematics disorder.<sup>5</sup> (Exs. 2.19 – 2.20)
- f. The Claimant has apparent social skill limitations. (Ex. 2.21)
- g. If the Claimant was “on his own in the community, it is questionable whether he would be compliant with his anticonvulsant medications and take adequate care of himself.” *Id.*
- h. The Claimant does not take any psychotropic medications. (Ex. 2.14 – 2.15)
- i. The Claimant’s Global Assessment of Function (GAF) is 60. *Id.*
- j. “[I]t is thought that [he] is not a terribly good candidate for competitive gainful employment. . . He may be able to handle some supported employment who would allow [him] to work at his own pace.” (Ex. 2.20 – 2.21)

5. Dr. █████ completed a Preliminary Examination for Interim Assistance Form (AD #2) on the Claimant’s behalf on March 22, 2011. (Exs. 2.3 – 2.4) He marked the box on the first page of the AD # 2 that indicated the Claimant experienced “[s]evere mental deficiency (developmental disabilities) evidenced by dependence on others for personal needs (e.g., hygiene) and other routine daily activities). Does not include mental disorders.” (Ex. 2.3) Immediately below the marked box, Dr. █████ handwrote “Amnesic Disorder.” On the second page of the AD # 2, Dr. █████ referred the Division to his neuropsychological evaluation report for Claimant’s diagnosis and relevant information. (Ex. 2.4) He further indicated the Claimant was not expected to recover from his conditions. *Id.*

6. The Claimant has not experienced a seizure since January 2010. (Ms. █████ testimony)

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<sup>4</sup> “Individuals with an amnesic disorder are impaired in their ability to learn new information or are unable to recall previously learned information or past events. . . The memory disturbance must be sufficiently severe to cause marked impairment in social or occupational functioning.” American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision, p. 172 (American Psychiatric Association 2000)

<sup>5</sup> “The essential feature of Mathematics Disorder is mathematical ability . . . that falls substantially below that expected for the individual’s chronological age, measured intelligence, and age-appropriate education . . . The disturbance in mathematics significantly interferes with academic achievement or with activities of daily living that require mathematical skills.” American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision, p. 53 (American Psychiatric Association 2000)

7. The Claimant has a driver's license; however, he has a history of motor vehicle violations (running a stop sign, not wearing his seat belt), has had a motor vehicle accident, and is scared to drive. (Ms. █████ testimony) He tried living on his own and his parents had him move back into the family home because he was making bad choices, was socializing with "bad people," and was not going to his high school completion classes. *Id.*

8. The Division sent the Claimant notice his application for Interim Assistance was denied on March 24, 2011. (Ex. 4) The Division's reasons for denying the application were as follows:

- a. The Claimant's seizure disorder is controlled. (Ex. 2.1; █████ testimony)
- b. The Claimant's full scale IQ is 82, which is above the Social Security level of 70 for finding a person disabled due to mental retardation. *Id.*
- c. The Claimant's organic mental disorders did not result in a marked limitation in his concentration, persistence, and pace, a marked limitation in his social functioning, repeated episodes of decompensation, a marked impairment in his activities of daily living, or an inability to function outside of a highly supportive living arrangement. *Id.*

## **PRINCIPLES OF LAW**

### **I. Burden of Proof and Standard of Proof**

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). "Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the [triers of fact] that the asserted facts are probably true." *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003).

### **II. Interim Assistance Program Requirements**

Interim Assistance is a benefit provided by the state to Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve their Supplemental Security Income application. 7 AAC 40.170(a) and (b); AS 47.25.255.

In order to qualify for Interim Assistance, the applicant must be "likely to be found disabled by the Social Security Administration." 7 AAC 40.180(b)(1). Pursuant to 7 AAC 40.180(b), the Division is to determine the likelihood of whether the applicant would "be found disabled by the Social Security Administration." The applicant must therefore either fall within the Social Security Administration's presumptive disability criteria or meet the disability criteria for impairments listed in the Social Security regulations. 7 AAC 40.180(b)(1).

## A. Presumptive Disability

The Interim Assistance eligibility determination process first asks the question if an applicant is presumptively disabled. *See* 7 AAC 40.180(b)(1)(A). In order for a person to qualify for Interim Assistance as presumptively disabled, the applicant's impairment must meet the Supplemental Security Income "program's presumptive disability criteria under 20 C.F.R. 416.934, as revised as of April 1, 2005, and adopted by reference." 7 AAC 40.180(b)(1)(A). The Division's Preliminary Examination for Interim Assistance form (form AD # 2)<sup>6</sup> contains the Division's list<sup>7</sup> of presumptively disabling conditions:

1. Amputation of a leg at the hip.
2. Total deafness.
3. The applicant is a recipient of hospice services due to terminal illness.
4. Spinal cord injury which produces an inability to ambulate without the use of a walker or crutches for longer than a two week period.
5. Bed confinement of immobility without a wheelchair, walker, or crutches, due to a longstanding condition, excluding recent accident and surgery. This does not include simple pain.
6. Severe mental deficiency (developmental disabilities), which is evidenced by dependence on other for personal needs, such as hygiene, and other routine daily activities. This does not include mental illness.
7. Downs Syndrome
8. End stage renal disease with ongoing dialysis.
9. HIV with a secondary infection which is severe enough for the individual to be considered disabled.

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<sup>6</sup> <http://dpaweb.hss.state.ak.us/e-forms/pdf/ad2.pdf> (accessed on July 20, 2011).

<sup>7</sup> The Division's list of presumptively disabling conditions contained on its Division's Preliminary Examination for Interim Assistance form (form AD # 2) is different from the list of presumptively disabling conditions listed in Social Security regulation 7 CFR 416.934. The Preliminary Examination for Interim Assistance form (form AD # 2) does not include the presumptive disabling condition of total blindness listed in 7 CFR 416.934. In addition, the Preliminary Examination for Interim Assistance form (form AD # 2) contains four presumptive disabling conditions not listed in 7 CFR 416.934: individual receiving hospice services due to a terminal illness, spinal cord injury which produces an inability to ambulate without the use of a walker or crutches for longer than a two week period, end stage renal disease with ongoing dialysis, and HIV with a secondary infection which is severe enough for the individual to be considered disabled.

10. Stroke, which occurred more than 3 months ago, with continued difficulty in walking or using a hand or arm.
11. Cerebral palsy, muscular dystrophy, or muscle atrophy and marked difficulty in walking, speaking, or coordination of the hands and arms.
12. Amyotrophic lateral sclerosis (Lou Gehrig's disease).

B. General (non-presumptive) Disability

If an applicant is not presumptively disabled, the Social Security disability determination process involves a step-by-step "sequential evaluation process," which is described in 20 CFR 416.920:

1. Is the applicant performing substantial gainful employment as defined by the applicable Social Security regulations? If so, the applicant is not disabled. 20 CFR 416.920(a)(4)(i). If the applicant is not performing substantial gainful employment, then the applicant must satisfy the next question.
2. Is the applicant's impairment severe? 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). Medical evidence is required to establish an applicant's impairment. 20 CFR 416.908. If an applicant has multiple impairments, the combined effect of all the impairments must be considered in determining whether an applicant is severely impaired. 20 CFR 416.923. 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 the applicant must satisfy the next question.
3. Has the applicant's severe impairment lasted for a continuous period of at least 12 months, or can it be expected to last for a continuous period of at least twelve months? 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, the applicant must satisfy the next question.
4. Does the applicant's severe impairment meet or medically equal the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1? If it does, the applicant is disabled and no further inquiry is required. 20 CFR 416.920(a)(4)(iii). If the severe impairment does not meet or medically equal the listing of impairments, then the applicant must satisfy the next question.
5. Does the applicant's severe impairment prevent him from doing his previous relevant work? This involves an evaluation of the applicant's residual functional capacity. If the applicant is not prevented from performing his previous relevant work, the applicant is not disabled. 20 CFR 416.920(a)(4)(iv). Otherwise, the applicant must satisfy the next question.
6. Is the applicant 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, 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).

In determining whether a person can perform other work, the Social Security regulations define the characteristics of different levels of work:

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities.

20 CFR 416.967(b).

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 CFR 416.967(a).

The Social Security medical vocational guidelines for a younger applicant (ages 18 to 44) who is limited to sedentary work, who has a high school diploma or a GED, with unskilled work experience —, normally direct a conclusion that the applicant is not disabled. 20 CFR Pt. 404, Subpt. P, App. 2, § 201.27. However, if such a person is not able “to perform a full range of sedentary work” they may be found disabled. 20 CFR Pt. 404, Subpt. P., App. 2, § 201.00(h)(3). Additionally, the medical vocation guidelines, located at 20 CFR Pt. 404, Subpt. P, App. 2, are not strictly applied when an applicant has both exertional and non-exertional limitations that limit his ability to work. 20 CFR 416.969a(d).

Exertional limitations are “limitations and restrictions imposed by [an applicant’s] impairment(s) and related symptoms, such as pain, [that] affect only ... the ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling).” 7 CFR 416.969a(b).

Non-exertional limitations are those that are not strength demanding, such as difficulty functioning due to anxiety and depression, or difficulty concentrating, understanding, remembering, seeing, or hearing, or difficulty “reaching, handling, stooping, climbing, crawling, or crouching.” 7 CFR 416.969a(c). Pain is also a nonexertional impairment. *E.g.*, *Baker v. Barnhart*, 457 F.3d 882, 894 (8th Cir.2006); *Haley v. Massanari*; 258 F.3d 742, 747 (8th Cir.2001); *Cline v.. Sullivan*, 939 F.2d 560, 565 (8th Cir.1991); *Prince v. Bowen*, 894 F.2d 283, 287 (8th Cir.1990).

## ANALYSIS

The issue in this case is whether the Division was correct when it, on March 24, 2011, denied the Claimant's February 1, 2011 Interim Assistance application. Because Claimant is an applicant for benefits, he is the party seeking to change the status quo. The Claimant therefore has the burden of proof by a preponderance of the evidence.

Applications for Interim Assistance are governed by 7 AAC 40.180, which requires that an applicant appear "likely to be found disabled by the Social Security Administration." 7 AAC 40.180(b)(1). This requires an applicant be either presumptively disabled according to Social Security criteria or that he have a disabling impairment according to Social Security criteria. 7 AAC 40.180(b).

### A. Presumptive Disability

In order to qualify for Interim Assistance as presumptively disabled, the Claimant must meet the Supplemental Security Income "program's presumptive disability criteria under 20 C.F.R. 416.934." 7 AAC 40.180(b)(1)(A). In this case, Dr. █████, a psychologist, checked the box on the Division's Preliminary Examination for Interim Assistance form that indicated the Claimant experienced a presumptive disqualifying condition contained in 20 CFR 416.934, specifically the Claimant experienced "[s]evere mental deficiency (developmental disabilities) evidenced by dependence on others for personal needs (e.g., hygiene) and other routine daily activities). Does not include mental disorders." See Finding of Fact 5 above. Dr. █████ specifically identified the Claimant's Amnestic Disorder as comprising the severe mental deficiency. *Id.*

The Claimant undisputedly has medical/psychological diagnoses of colpocephaly, Amnestic Disorder, Cognitive Disorder, Mathematics Disorder, and a below average full scale IQ of 82. See Finding of Fact 4 above. The Claimant has a driver's license and lived on his own for a time. See Finding of Fact 7 above. Ms. █████, his mother, testified the Claimant has difficulties with his driving, and made bad choices while living on his own; these included associating with an inappropriate social group and not attending his high school completion classes. *Id.* However, no evidence was presented that the Claimant was dependent "on others for personal needs (e.g., hygiene) and other routine daily activities."

In order for the Claimant to be eligible for Interim Assistance, based on the presumptive eligibility category of a "severe mental deficiency, he must be dependent "on others for personal needs (e.g., hygiene) and other routine daily activities." This is the criterion for a "severe mental deficiency" as set forth on the Preliminary Examination for Interim Assistance form. (Ex. 2.3) Because there was no evidence presented showing that the Claimant was dependent "on others for personal needs (e.g., hygiene) and other routine daily activities," the Claimant failed to prove, by a preponderance of the evidence, that he is presumptively disabled.

### B. General (non-presumptive) Disability

Because the Claimant is not presumptively disabled, it is necessary to follow the Social Security disability determination process "sequential evaluation process" described in 20 CFR 416.920.



1. Current Employment.

The last time the Claimant worked was in January 2008, i.e. he is currently unemployed. *See* Finding of Fact 3 above. He therefore satisfies the first step of the Social Security disability analysis. It is therefore necessary to proceed to the next step, and determine if he is severely impaired.

2. Severe Impairment.

A review of the medical evidence in this case demonstrates that the Claimant has medical/psychological diagnoses of a seizure disorder, colpocephaly, Amnesic Disorder, Mathematics Disorder, and a below average full scale IQ of 82. *See* Findings of Fact 4 - 5 above.

The Claimant's seizure disorder is undisputedly controlled, and the Claimant has not experienced a seizure since January 2010. *See* Findings of Fact 4(b) and 6 above. As a result, his seizure is not a severe impairment and will not be addressed further.

The Claimant's other impairments, colpocephaly, Amnesic Disorder, Mathematics Disorder, and a below average full scale IQ of 82, are mental impairments that "significantly limit[s] [his] ... mental ability to do basic work activities." 20 CFR 416.920(c). The Claimant therefore satisfies the regulatory requirement that he experiences a severe mental impairment.

Because the Claimant has severe mental impairments, it is necessary to proceed to the next step of the Social Security disability analysis and determine if his severe mental impairments have lasted or can be expected to last for a continuous period of at least 12 months.

3. Duration.

The medical evidence in the record shows that the Claimant's experiences colpocephaly, which appears to be related to partial genesis of his corpus callosum; in other words his brain is not fully developed. *See* Finding of Fact 4(a) above. This is a lifelong condition. As such, Claimant's impairments have therefore lasted for longer than 12 months and can be expected to last for over 12 months. They meet the durational requirement.

Because the Claimant's severe physical impairment has lasted for a period of longer than 12 continuous months and can be expected to persist for longer than 12 months, it is necessary to proceed to the next step of the Social Security disability analysis and determine if his severe physical impairment meets or medically equals the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1.

4. Meeting or Equaling the Social Security Impairment Listings.

The Claimant's severe impairments consists of his colpocephaly, Amnesic Disorder, Mathematics Disorder, and a below average full scale IQ of 82. These fall under two possible classifications, an

Organic Mental Disorder, which is a “psychological or behavioral abnormalit[y] association with a dysfunction of a brain,” and mental retardation. *See* 20 CFR Pt 404, Subpart P, Appendix 1, §§ 12.02 and 12.05.

a. Organic Mental Disorder.

The Social Security disability regulations set out the requirements for an applicant to meet or equal the listing for an Organic Mental Disorder as follows:

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:

1. Disorientation to time and place; or
2. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
3. Perceptual or thinking disturbances (e.g., hallucinations, delusions); or
4. Change in personality; or
5. Disturbance in mood; or
6. Emotional lability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or
7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria–Nebraska, Halstead–Reitan, etc.;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

Or

C. Medically documented history of a chronic organic mental disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

20 CFR Pt 404, Subpart P, Appendix 1, § 12.02.

The evidence in this case shows the Claimant meets the “A” criteria, “a loss of specific cognitive abilities or affective changes and the medically documented persistence” of Item 2: “Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past),” as demonstrated by his medical diagnosis of Amnesic Disorder and his job performance. *See* Findings of Fact 3 and 4(e) above.

In addition to the “A” criteria, the Claimant must also satisfy at least two of the four “B” criteria: marked restrictions in social functioning, marked restrictions in activities of daily living, marked difficulties in concentration, persistence, and pace, or repeated episodes of decompensation. A “marked limitation” exists when there is a serious interference with the ability to function. 20 CFR Pt 404, Subpart P, Appendix 1, § 12.00(C). “Decompensation” consists of “exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence or pace.” 20 CFR Pt 404, Subpart P, Appendix 1, § 12.00(C)(4). “Repeated episodes” of decompensation means three episodes within 1 year, each lasting for at least two weeks. *Id.* However, more frequent shorter episodes may also fulfill this requirement. *Id.*

The evidence in this case shows the Claimant was essentially able to function both socially and living on his own, albeit with some difficulties as reflected by his mother’s testimony and by Dr. ██████’s conclusion, contained in his neuropsychological evaluation, that the Claimant has “apparent” difficulties in social functioning and that it was “questionable” whether he could successfully live on his own. *See* Findings of Fact 4(f), (g), and 7 above. However, neither the Claimant’s mother’s concerns nor those of Dr. ██████ are sufficient to establish that the Claimant has a “marked limitation” in either his activities of social functioning or his activities of daily living.

The evidence, however, does show that the Claimant has marked difficulties in concentration, persistence and pace. This factual conclusion is supported by the report of the Claimant's former employer that the Claimant "could not stay on task," was unable to follow directions, and required monitoring. *See* Finding of Fact 3 above. In addition, the Claimant has a diagnosis of Amnestic Disorder, which diagnosis specifies that the memory disturbance must be sufficiently severe to cause marked impairment in social or occupational functioning." American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision, p. 172 (American Psychiatric Association 2000).

The final element to be met in the "B" criteria is whether the Claimant experiences episodes of decompensation. There is absolutely no evidence in this case showing that the Claimant satisfies this element, i.e. that he experiences "repeated episodes" of decompensation, meaning three episodes within 1 year, each lasting for at least two weeks. *See* 20 CFR Pt 404, Subpart P, Appendix 1, § 12.00(C)(4).

The Claimant therefore satisfies one of the "A" criteria, specifically that he has an impaired memory. However, he only satisfies one of the "B" criteria, specifically that he experiences a marked limitation in his concentration, persistence, and pace. In order to meet or equal the listing for an Organic Mental Disorder under the "A" and "B" criteria, he must satisfy one of the "A" criteria and two of the "B" criteria. Because he only satisfies one of the "B" criteria, he does not meet or equal the listing for an Organic Mental Disorder under the "A" and "B" criteria.

An applicant can meet or equals the listing for an Organic Mental Disorder under the "C" criteria, as set out above, even if he does not satisfy the "A" and "B" criteria. The "C" criteria requires that the Claimant have:

C. Medically documented history of a chronic organic mental disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

20 CFR Pt 404, Subpart P, Appendix 1, § 12.02.

The Claimant satisfies the threshold requirement: he has a medically documented organic mental disorder of at least two years duration that has more than minimally limited his ability to work, as

discussed above. In addition, although he does not currently take any psychotropic medications, he resides in a supportive environment and his last employment was a supportive environment, where he was monitored and cued.

However, in order to qualify under the “C” criteria, the Claimant must have repeated episodes of decompensation or a condition such that a minimal increase in mental demands or environmental change would cause him to decompensate, or a history of an inability to function outside a highly supportive environment. As discussed above, under the “B” criteria, the Claimant does not have repeated episodes of decompensation.

There is no evidence in this case that he would decompensate if he experienced either a minimal increase in mental demands or an environmental change. And, as discussed in the “B” criteria above, the Claimant was able to function on his own, albeit with some difficulty, so there is no evidence that he is unable to function outside a highly supportive environment. As a result, the Claimant does not qualify under the “C” criteria.

In summary, the Claimant has not met his burden of proof, by a preponderance of the evidence, and demonstrated that he meets or equals the Social Security disability listing for Organic Mental Disorders.

b. Mental Retardation

The Social Security disability regulations set out the requirements for an applicant to meet or equal the listing for Mental Retardation as follows:

- i. “Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that use of standardized measures of intellectual functioning is precluded.” 20 CFR Pt 404, Subpart P, Appendix 1, § 12.05(A); or
- ii. A full scale IQ of 70 or less. 20 CFR Pt 404, Subpart P, Appendix 1, § 12.05(B) - (D).

A review of the evidence shows the Claimant does not meet either of the two requirements for the Mental Retardation disability listing. First, no evidence was presented showing that he was dependent on others for his personal care needs. Second, he has a full scale IQ of 82, which is above the upper IQ limit of 70. *See* Finding of Fact 4(c) above. Claimant has therefore not met his burden of proof, by a preponderance of the evidence, and demonstrated that he meets or equals the Social Security disability listing for Mental Retardation.

Because the Claimant does not meet or equal the Social Security disability listings for either an Organic Mental Disorder or Mental Retardation, it is necessary to proceed to the next step and determine whether he can perform his previous relevant work.

5. Previous Relevant Work.

The Claimant has limited work experience. It consists of several short-term fast food jobs and working for 9 months in a gas station/convenience store. *See* Finding of Fact 2 above. The gas station/convenience store job is the Claimant's most recent job. *See* Finding of Fact 3 above. The Claimant's job duties in that position consisted of stocking and custodial tasks, along with limited customer service. *Id.* Because this was the Claimant's most recent employment, it is the Claimant's previous relevant work.

The Claimant had difficulties performing in his gas station/convenience store job. *Id.* He could not stay on task, was unable to follow directions, and required monitoring. *Id.* As discussed in the preceding section regarding Organic Mental Disorders, this is indicative of marked difficulties in concentration, persistence and pace, and consistent with his diagnosis of Amnesic Disorder. However, despite his marked difficulties in concentration, persistence, and pace, he was discharged from the gas station/convenience store for theft, not for inadequate performance. *Id.* As a result, the evidence in the record does not show that the Claimant is not capable of performing his previous relevant work.

The Social Security disability rules provide that if the applicant is not prevented from performing his previous relevant work, the applicant is not disabled. 20 CFR 416.920(a)(4)(iv). Because the Claimant did not prove, by preponderance of the evidence, that he was not capable of performing his previous relevant work, he has failed to satisfy the Interim Assistance program's requirement that he is "likely to be found disabled by the Social Security Administration." *See* 7 AAC 40.180(b)(1). The Division was therefore correct to deny the Claimant's February 1, 2011 Interim Assistance application.

### **CONCLUSIONS OF LAW**

1. The Claimant has severe impairments which have lasted for longer than 12 months.
2. The Claimant's severe impairments do not satisfy the requirements for a presumptive disability, as contained in 20 C.F.R. 416.934 and 7 AAC 40.180(b)(1)(A).
3. The Claimant's severe impairments do not meet or equal the Social Security Disability listings contained in 20 CFR Section 404, Subpart P, Section 1.
4. The Claimant's severe impairments do not prevent him from performing his previous relevant work.
5. As a result, the Claimant has failed to prove, by a preponderance of the evidence, that he satisfies the Interim Assistance program's eligibility requirement that he is "likely to be found disabled by the Social Security Administration." *See* 7 AAC 40.180(b)(1).

### **DECISION**

The Division was correct when it denied the Claimant's February 1, 2011 Interim Assistance application on March 24, 2011.

**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:


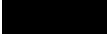
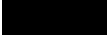
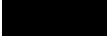
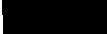

Director of the Division of Public Assistance  
Department of Health and Social Services  
PO Box 110640  
Juneau, AK 99811-0640

DATED this 29th day of July, 2011.

    /Signed/      
Larry Pederson  
Hearing Authority

**Certificate of Service**

I certify that on this 29<sup>th</sup> day of July, 2011, true and correct copies of the foregoing were sent to:  
Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested  
and to the following by secure e-mail:

, Public Assistance Analyst  
, Public Assistance Analyst  
, Policy & Program Development  
, Staff Development & Training  
, Administrative Assistant II  
, Eligibility Technician I

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