

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-257
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Interim Assistance benefits on June 1, 2011. (Ex. 1) On July 14, 2011, the Division sent the Claimant notice his Interim Assistance application was denied. (Ex. 5.1) The Claimant requested a Fair Hearing on July 18, 2011. (Ex. 5.2)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on August 16, 2011. The Claimant participated telephonically. He represented himself and testified on his own behalf. [REDACTED], Public Assistance Analyst with the Division, participated in person; she represented the Division and testified on its behalf. [REDACTED], Health Program Manager II with the Division, participated telephonically and testified on behalf of the Division.

ISSUE

Was the Division correct when it denied the Claimant's June 1, 2011 Interim Assistance application on July 14, 2011?

SUMMARY OF DECISION

The Claimant is severely physically impaired due to his chronic pain/osteoarthritis. His severe physical impairment does not meet or equal the Social Security disability listings. He, however, is not able to perform his physically demanding previous relevant work. Regardless, he is capable of performing at the sedentary level of 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 June 1, 2011 Interim Assistance application.

FINDINGS OF FACT

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

1. The Claimant is currently 47 years old (birth date [REDACTED]). (Ex. 1) He is literate in the English language and has a GED. (Ex. 2.9)
2. The Claimant's most recent work experience was as a woodcutter, which was from October 2003 through September 2006. (Ex. 2.7; Claimant testimony) This is strenuous physical labor. *Id.* He has not worked since 2006. *Id.* He was employed as a day laborer from 1994 to 1997 and from 1999 through 2003. (Ex. 2.7) For slightly over a 2 year period, from June 1997 through October 1999, he worked in the mining industry, where he operated heavy machinery. (Exs. 2.7 – 2.8)
3. Dr. [REDACTED], M.D., completed a Preliminary Examination for Interim Assistance Form (AD #2) on the Claimant's behalf on June 15, 2011. (Exs. 2.3 – 2.4) On that form, Dr. [REDACTED] stated the Claimant had diagnoses of osteoarthritis, chronic pain syndrome, and anxiety/depression. (Ex. 2.4) Dr. [REDACTED] further stated the Claimant was not expected to recover from those conditions. *Id.*
4. The only medical documents in the record, other than the June 15, 2011 Preliminary Examination for Interim Assistance Form (AD #2), consist of the following:
 - a. Examination notes from April 27, 2011, which indicate the Claimant has chronic neck, back, and right shoulder pain. (Ex. A, p. 3) The notes show that the Claimant complained of numbness in his hands, and that it hurts to sit or stand. *Id.* The Claimant experienced pain when his cervical, lumbar, and thoracic vertebrae were palpated, and his range of motion was affected. *Id.*
 - b. Examination notes from June 15, 2011, which indicate the Claimant complained of lower back pain, hip pain, and numbness and tingling in his right arm. (Exs. 2.12 – 2.13) The notes show that his gait and station were normal, his mood was anxious and depressed, his neck, ribs, and right upper extremity were abnormal upon inspection and palpation, he experienced pain on the right side of his neck and his right shoulder, and that he had a limited range of motion and limited rotation with regard to his back. *Id.* The notes indicate a diagnosis of osteoarthritis. *Id.*
5. The medical documents in the record do not contain any medically noted limitations on the Claimant's ability to walk, stand, sit, or lift over a specified weight range. (Exs. 2.3 – 2.4; 2.12 – 2.13; Ex. A, pp. 1 - 3) Nor do they contain any information regarding how the Claimant's diagnosis of anxiety/depression, provided on the June 15, 2011 Preliminary Examination for Interim Assistance Form (AD #2), affects or limits the Claimant's functioning in any manner. *Id.*
6. The Claimant testified as follows:
 - a. He has persistent grinding back pain in the pelvic region.

- b. He can walk between one hundred to two hundred yards, but then he needs to stop and sit down.
- c. He can stand for anywhere from ten minutes to twenty minutes, and then he needs to sit down.
- d. He can sit for between a half hour to forty-five minutes before he needs to stand.
- e. He has very limited medical records because he has not been treated and cannot afford medical treatment.
- f. His anxiety level is “sky high.”

7. The Claimant completed a “Disability and Vocational Report” (form APA #4), which the Division received on June 17, 2011. (Exs. 2.5 – 2.9) In that report, the Claimant stated that he experienced chronic back pain, that he could not walk like he used to, could not lift, could not bend over, and was in constant pain. (Ex. 2.5)

8. The Division denied the Claimant’s application for Interim Assistance on July 14, 2011. (Ex. 4) The Division’s medical reviewer (██████) testified that the Claimant did not qualify for Interim Assistance for the following reasons:

- a. There is insufficient evidence in the medical records to determine whether the Claimant’s chronic pain/osteoarthritis is severe. While there is indication of some range of motion limitations contained in the medical records, it is not enough to establish severity.
- b. There is no information in the medical records regarding the Claimant’s anxiety/depression besides the Preliminary Examination for Interim Assistance Form (form AD #2). As a result, there is insufficient evidence in the medical records to establish that it is a severe impairment.
- c. There is insufficient evidence in the medical records to determine whether the Claimant’s identified impairments (chronic pain/osteoarthritis and anxiety/depression) satisfy the durational requirement.
- d. The Claimant’s chronic pain/osteoarthritis falls within the Social Security disability category of musculoskeletal impairments. However, there is no radiological evidence showing spinal impairments, or medical evidence showing that his ability to walk or use his upper extremities is impaired. The Claimant therefore does not meet or equal the Social Security disability listing for musculoskeletal impairments.
- e. The Division did not express an opinion on whether the Claimant was capable of performing his previous relevant work.

- f. The Claimant is capable of performing sedentary work, and given his age and English language literacy, he is not disabled.

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

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].” AS 47.25.430. Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income benefits. 7 AAC 40.170(a).¹ Once an applicant is approved for federal Supplemental Security Benefits, s/he is then eligible to receive Adult Public Assistance benefits. 7 AAC 40.030(a); 7 AAC 40.170(a).

Interim Assistance is a monthly payment in the amount of \$280 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 47.25.455. In return for the State paying Adult Public Assistance applicants Interim Assistance pending Social Security Administration approval, the applicants agree, if and when the Social Security Administration approves them for Supplemental Security Income, to reimburse the State for the Interim Assistance payments they have received from the State. 7 AAC 40.375(c) and (d); AS 47.25.455(c). The source for the repayment is the Claimant’s first Supplemental Security Income payment, which the applicants are required to assign to the State. 7 AAC 40.375(c).

The Social Security Administration, in turn, before it agrees to assign an applicant’s first Supplemental Security Income payment over to the State for reimbursement of Interim Assistance payments, requires that the State enter into an agreement with the Social Security Administration. 20 CFR 416.1901; 20 CFR 416.1910. The applicable Social Security regulations that control the reimbursement to the State of Interim Assistance payments specifically define “Interim Assistance” as “assistance the State gives you . . . beginning with the first month for which you are eligible for [Supplemental Security Income] benefits.” 20 CFR 415.1902.

¹ Adult Public Assistance applicants whose income exceeds the Supplemental Security Income standards are not required to apply for Supplemental Security Income benefits. 7 AAC 40.170(a).

The Alaska *Adult Public Assistance Manual* states that “[t]he [Adult Public Assistance] program uses the same definitions of disability and blindness as [Supplemental Security Income].” *Adult Public Assistance Manual* Section 426-2C.

Alaska Adult Public Assistance regulation 7 AAC 40.030(a) reads:

An applicant must meet the eligibility requirements of the [Supplemental Security Income] program contained in Title XVI of the Social Security Act . . . and in 20 C.F.R. Part 416, and the eligibility requirements set forth in this chapter. If the requirements of this chapter conflict with requirements of the [Supplemental Security Income] program, the requirements of this chapter apply unless the requirements of the [Supplemental Security Income] program specifically supersede inconsistent state program requirements.

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 Interim Assistance regulation, 7 AAC 40.180, contains a number of specific elements, which an applicant must satisfy in order to establish Interim Assistance eligibility.² These

² **7 AAC 40.180. Initial determination of disability.** (a) An applicant whose disability is being determined by the department under 7 AAC 40.170(b) must be examined by a psychiatrist or other physician who has entered into a current provider agreement under 7 AAC 43.065. The results of the examination must be provided on a form approved by the department.

- (b) The department will make a determination of whether the applicant is disabled based on:
- (1) a medical review by the department as to whether the applicant is likely to be found disabled by the Social Security Administration, including whether the applicant's impairment meets
 - (A) The SSI program's presumptive disability criteria under 20 C.F.R. 416.934, as revised as of April 1, 2005, and adopted by reference; or
 - (B) 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;
 - (2) medical evidence provided by the applicant or obtained by the department;
 - (3) other evidence provided by the applicant under 7 AAC 40.050, if applicable; and
 - (4) a review of the written results of the psychiatrist's or other physician's examination under (a) of this section.
- (c) In determining whether an applicant's disability meets the criteria set out in (b)(1)(B) of this section, the department will consider whether the
- (1) the applicant's condition is listed as an impairment category described in (b)(1)(B) of this section;

elements are not one hundred percent identical to the elements that a federal Supplemental Security Income applicant must satisfy. *See* 20 CFR 416.920. However, the following factors demonstrate that the Division is required to adhere to the federal Supplemental Security Income eligibility requirements contained in 20 CFR 416:

1. The Division, as part of its entering into an Interim Assistance reimbursement agreement with the Social Security Administration, agreed to provide Interim Assistance payments to persons who are “eligible” for Supplemental Security Income as defined by the Social Security Administration. *See* 20 CFR Sections 416.1901, 1902, and 1910.
2. Alaska regulation 7 AAC 40.180(b)(1) reads that an applicant must be “likely to be found disabled by the Social Security Administration.”
3. Alaska regulation 7 AAC 40.030(a) reads that Adult Public Assistance (and hence Interim Assistance) applicants “must meet the eligibility requirements of the [Supplemental Security Income] program contained in Title XVI of the Social Security Act . . . and in 20 C.F.R. Part 416.”
4. The Division interprets the Interim Assistance regulations as requiring it to follow Supplemental Security Income eligibility rules as evidenced by the Alaska *Adult Public Assistance Manual* statement that “[t]he [Adult Public Assistance] program uses the same definitions of disability and blindness as [Supplemental Security Income].” *Adult Public Assistance Manual* Section 426-2C.

The Social Security disability determination process for Supplemental Security Income eligibility 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(a). 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

(2) medical information obtained under (b) of this section documents the applicant's impairment;

(3) impairment affects the applicant's activities of daily living;

(4) the applicant can perform any other work, including sedentary work; and

(5) the applicant's impairment has lasted or is expected to last for a continuous period of not less than 12 months.

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. 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.

- 2(b). 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.
3. 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.
4. 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.
5. 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 classify work into five different levels: sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work is the least physically demanding classification:

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 medical vocational guidelines, which are part of the process for determining whether a person can perform other work, are contained in 20 CFR Pt. 404, Subpt. P, App. 2, § 201. The specific medical

vocational guidelines for an English literate individual in the 45 - 49 age range, who is able to perform sedentary work, regardless of whether he has a high school diploma, who has a range of work experience from unskilled to skilled, regardless of whether those skills are transferable, direct a conclusion that the applicant is not disabled. 20 CFR Pt. 404, Subpt. P, App. 2, § 201.18 - 22.

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 denied the Claimant’s June 1, 2011 Interim Assistance application on July 14, 2011. 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 that an applicant have a disabling impairment according to Social Security criteria. 7 AAC 40.180(b).

It is necessary to review the evidence in this case and decide, using the multistep Social Security disability analysis, if the Claimant’s impairments satisfy the Social Security disability criteria. If they do, the Claimant is disabled by Social Security standards and eligible for Interim Assistance benefits. If they do not, the Claimant is not disabled by Social Security standards and not eligible for Interim Assistance benefits.

1. Substantial Gainful Activity.

The Claimant has not worked since 2006. *See* Finding of Fact 2 above. He therefore satisfies the first step of the Social Security disability analysis, i.e. that he is not engaged in substantial gainful activity. *See* 20 CFR 416.920(a)(4)(i). It is therefore necessary to proceed to the next step of the Social Security

disability analysis and determine if he has a severe impairment that has lasted or can be expected to last for a period of 12 continuous months or longer. *See* 20 CFR 416.920(a)(4)(ii).

2(a). Severe Impairment.

The Claimant has two medically diagnosed impairments. These are his chronic pain/osteoarthritis and anxiety/depression. It is difficult to evaluate either of these for severity due to the exceedingly minimal medical documents contained in the record.

The limited medical records state the Claimant has a diagnosis of osteoarthritis. *See* Finding of Fact 4(b) above. The medical examination notes state the Claimant experienced pain when his cervical, lumbar, and thoracic vertebrae were palpated, that he experienced pain on the right side of his neck and right shoulder, that his neck, ribs, and right upper extremity were abnormal upon inspection and palpation, and that he had a limited range of motion and limited rotation. *See* Finding of Fact 4 above. These medical examination notes therefore establish that the Claimant has physical limitations which would limit his ability to perform basic physical work activities. As a result, his osteoarthritis/chronic pain is a severe impairment, as defined by the applicable Social Security regulation. *See* 20 CFR 416.920(c).

The medical evidence regarding the Claimant's diagnosis of anxiety/depression is minimal. It consists of the diagnosis of anxiety/depression contained in the June 15, 2011 Preliminary Examination for Interim Assistance Form (AD #2) and the notation contained on the June 15, 2011 medical examination notes that the Claimant was anxious and depressed. *See* Findings of Fact 3 and 4(b) above.

The Social Security disability process measures whether a mental impairment is severe or not by looking at four areas, (1) activities of daily living; (2) social functioning; (3) concentration, persistence, or pace and (4) episodes of decompensation.³ 20 C.F.R. § 416.920a(c)(3). "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* § 416.921)." 20 C.F.R. § 416.920a(d)(1).

There is no indication in the medical evidence showing if or how the Claimant's anxiety/depression affects or limits the Claimant's functioning in any manner whatsoever, or that he has experienced any

³Social Security regulation 20 CFR, Part 404, Subpart P, Appendix 1, Section 12.00(C)(4) defines "episodes of decompensation" as follows:

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.

episodes of decompensation. *See* Finding of Fact 5 above. Because there is no medical evidence showing that the Claimant's anxiety/depression limits his (1) activities of daily living; (2) social functioning; (3) concentration, persistence, or pace, or that he has experienced (4) episodes of decompensation, the Claimant has not established that his anxiety/depression is a severe impairment.

The Claimant therefore has a severe physical impairment that consists of his chronic pain/osteoarthritis. His depression/anxiety is not a severe impairment.

Because the Claimant has proven that he has a severe physical impairment, it is necessary to proceed to the next step of the Social Security disability analysis and determine if his severe physical impairment satisfies the durational requirement.

2(b). Duration

In order to satisfy the next step in the Social Security disability analysis, the Claimant's severe impairment, his chronic pain/osteoarthritis, must have lasted for a continuous period of at least 12 months, or be expected to last for a continuous period of at least twelve months. 20 CFR 416.909; 20 CFR 416.920(a)(4)(ii). The June 15, 2011 Preliminary Examination for Interim Assistance Form (AD #2) states the Claimant is not expected to recover from this condition. *See* Finding of Fact 3 above. This means that his condition is expected to last beyond a twelve month period. The Claimant satisfies the duration test.

It is therefore necessary to proceed to the next step of the Social Security disability analysis and determine if his severe physical impairments meet or medically equal the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1. *See* 20 CFR 416.920(a)(4)(iii).

3. Meeting or Equaling the Social Security Impairment Listings.

The Claimant's chronic pain/osteoarthritis falls in the musculoskeletal category. In order for the Claimant to meet or medically equal the criteria set out in the musculoskeletal listing, he must have "an extreme limitation of the ability to walk" or "an extreme loss of function of both upper extremities." 20 CFR Pt 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1) and 1.00(B)(2)(c).

The only medical evidence regarding the Claimant's ability to walk stated that, as of June 14, 2011, his gait (walking) and station (standing) were normal. *See* Finding of Fact 4(b) above. The only medical evidence regarding his upper extremities was that his right upper extremity was abnormal, and that he experienced pain on the right side of his neck and his right shoulder. *See* Finding of Fact 4(b) above.

The Claimant testified that he can walk for between one to two hundred yards before needing to sit down. *See* Finding of Fact 6(b) above. On April 27, 2011, he informed the examining physician that he experienced numbness in his hands. *See* Finding of Fact 4(a) above.

An "extreme limitation of the ability to walk" is defined as "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.” *See* 20 CFR Pt 404, Subpart P, Appendix 1, § 1.00(B)(2)(b)(2). Despite the Claimant’s testimony that his ability to walk was affected, the only medical evidence shows that his “gait” was normal. As a result, there is no medical evidence showing that the Claimant’s ability to walk is “extremely limited.”

The Claimant told his examining physician that he experienced numbness in his hands. However, there is no medical evidence that the Claimant has an “extreme loss of function” of both upper extremities, merely that he has some abnormality with his right upper extremity and right shoulder pain.

Because there is no medical evidence establishing that the Claimant’s has an “extreme limitation of the ability to walk” or that he has an “extreme loss of function” of both upper extremities, he does not meet or equal the Social Security musculoskeletal disability listing as contained in 20 CFR Pt 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1) and 1.00(B)(2)(c).

In summary, the Claimant’s chronic pain/osteoarthritis does not meet or equal the Social Security disability listings contained in 20 CFR Pt 404, Subpart P, Appendix 1. It is therefore necessary to proceed to the next step, determining whether the Claimant can perform his previous relevant work. *See* 20 CFR 416.920(a)(4)(iv).

4. Previous Relevant Work.

The Claimant’s most recent work experience was as a wood cutter. *See* Finding of Fact 2 above. This is very physical work. It requires cutting wood, stacking it, and loading it. The medical evidence shows that the Claimant has spinal pain, right shoulder pain, and that his range of motion and back rotation are limited. *See* Finding of Fact 4(a) and (b) above. The Claimant testified that he has persistent grinding back pain in the pelvic region. *See* Finding of Fact 6(a) above.

The medical evidence documents the Claimant’s pain and limited range of motion and rotation. This demonstrates that the Claimant can no longer work, due to his medically documented pain and limited range of motion and limited rotation, at his previous physically strenuous work as a wood cutter.

The Claimant therefore has met his burden of proof and established that he cannot perform his previous relevant work. It is therefore necessary to proceed to the next step in the Social Security disability analysis, whether the Claimant can perform any other work. *See* 20 CFR 416.920(a)(4)(v).

5. Performing Other Work.

The Claimant testified that he could sit up to forty-five minutes before needing to stand, stand for up to twenty minutes before needing to sit, and that he can walk only up to two hundred yards before needing to sit. *See* Finding of Fact 6(b) - (d) above.

The medical evidence shows that the Claimant has spinal pain, right shoulder pain, and that his range of motion and back rotation are limited. *See* Finding of Fact 4(a) and (b) above.

However, the medical records do not indicate the Claimant is incapable of sitting for periods of time due to pain, or that he has walking, standing, or lifting restrictions. *See* Finding of Fact 5 above.

Sedentary work is the least physically demanding work category. It involves mainly sitting, occasionally lifting or carrying articles like docket files, ledgers, and small tools, with occasional walking and standing, and lifting up to 10 pounds. *See* 20 CFR 416.967(a). This is clerical and office work. The medical evidence, as discussed above, shows that the Claimant is capable of performing sedentary work, by the fact that there is no medical evidence showing that he is limited in performing sedentary work as described above.

The medical vocational guidelines for an English literate individual in the 45 - 49 age range, who is limited to sedentary work, regardless of whether he has a high school diploma, who has a range of work experience from unskilled to skilled, regardless of whether those skills are transferable, direct a conclusion that the applicant is not disabled. 20 CFR Pt. 404, Subpt. P, App. 2, § 201.18 - 22.

The Claimant falls within the 45 - 49 year age range, is literate in English and has GED. *See* Finding of Fact 1 above. Because he is capable of sedentary work, he falls under the medical vocational rules, which mandate a conclusion that he is not disabled. *See* 20 CFR Pt. 404, Subpt. P, App. 2, § 201.18 - 22.

The Claimant has therefore 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 correct to deny the Claimant's June 1, 2011 Interim Assistance application.

CONCLUSIONS OF LAW

1. The Claimant is not employed and experiences a severe physical impairment, chronic pain/osteoarthritis, which has lasted for longer than 12 months. His mental impairment, anxiety/depression, does not constitute a severe impairment.
2. The Claimant's severe physical impairment does not meet or equal the Social Security Disability listings contained in 20 CFR Section 404, Subpart P, Section 1.
3. The Claimant's severe physical impairment prevents him from performing his previous relevant work.
4. The Claimant is capable of sedentary work.
5. Because the Claimant is capable of sedentary work, the Claimant is not disabled pursuant to the Social Security medical vocational guidelines, 20 CFR Pt. 404, Subpt. P, App. 2, § 201.18 - 22.
6. 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 June 1, 2011 Interim Assistance application on July 14, 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



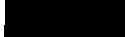
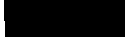

DATED this 13th day of October, 2011.

/Signed/

Larry Pederson
Hearing Authority

Certificate of Service

I certify that on this 13th day of October, 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

J. Albert Levitre, Jr.
Law Office Assistant I