

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

In the Matter of:)
) OAH No. 13-1470-APA
 M H) DPA Case No.
)
_____)

FAIR HEARING DECISION

I. Introduction

The issue in this case is whether M H meets the Interim Assistance program's disability criteria. The Division of Public Assistance (Division) concluded that although Ms. H's degenerative disk disease (DDD) and degenerative joint disease (DJD) constitute severe impairments, and although these impairments have lasted long enough to satisfy the 12 month durational requirement, they do not satisfy the specific criteria of the Social Security Administration's (SSA's) applicable impairment "listings."¹ Accordingly, the Division denied Ms. H's application for Interim Assistance.²

This decision concludes that Ms. H has several severe impairments, and that these impairments satisfy the 12 month durational requirement. However, the Division correctly determined that Ms. H's impairments do not satisfy the specific criteria of any of the SSA's applicable impairment "listings." As a result, Ms. H does not satisfy the Interim Assistance program's eligibility requirement that she be "likely to be found disabled by the Social Security Administration."³ The Division's decision denying Ms. H's application for Interim Assistance is therefore affirmed.

II. Facts

A. Ms. H's Medical Condition, Functional Impairments, and Work History

Ms. H is 58 years old.⁴ She has a history of scoliosis.⁵ On March 6, 2006 Ms. H complained to her doctor of back pain, chest pain, shoulder pain, pain radiating up her left arm, pain and stiffness in her hands, and knee pain.⁶ X-ray reports dated March 15, 2006 state that, at that time, Ms. H had moderately severe degenerative joint disease (DJD) of the right hand, mild DJD of the left knee, moderately severe degenerative disk disease (DDD) of the L5 vertebra, and some

¹ Ex. 5.2.
² Exs. 4 - 5.2.
³ 7 AAC § 40.180(b)(1).
⁴ Ex. 1.
⁵ Ex. 3.50.
⁶ Ex. 3.50.

DDD at L4-5 and L5-S1.⁷ Up to this time Ms. H had been employed as a waitress and in other jobs involving manual work, but in 2006 she told her doctor that her pain had gotten to the point where she could no longer perform this type of work on a sustained basis.⁸

Ms. H has complained of light-headedness and dizziness since 2006, and on April 9, 2006 her brain was magnetically imaged.⁹ This study found that much of her brain was normal, but that there were regions of low signal in her left frontal lobe, calcification, cavernous angioma, and an old hemorrhage.

X-rays taken on April 23, 2012 found Ms. H has "prominent degenerative changes at the first carpal-metacarpal articulation" and "throughout all the interphalangeal joints of the hand."¹⁰

On August 21, 2013 Dr. Raymond E. B, D.O. performed Ms. H's preliminary examination for Interim Assistance and completed the Division's Form AD-2.¹¹ Ms. H complained of pain in several joints, especially her jaw, neck, shoulders, hips, legs, and feet.¹² Ms. H also complained of daily headaches, ringing in her ears, vertigo, all-over skin tenderness, back pain, and bilateral hip, knee, wrist, and foot pain. Ms. H rated her pain 4 out of 10 at best, and 10 out of 10 at worst, at an average of 7 out of 10. She stated that finding a comfortable position is difficult and that she must change position after 15-30 minutes.

In his report, Dr. B wrote that Ms. H suffers from degenerative joint disease (DJD), degenerative disk disease, rheumatoid arthritis, and chronic obstructive pulmonary disease (COPD).¹³ Dr. B further stated that these conditions were brought about by physical deterioration due to aging, and that Ms. H was not expected to recover from these conditions.¹⁴ In a letter dated September 10, 2013 Dr. B wrote in relevant part as follows:¹⁵

[S]he appears to have difficulty with the physical work environments, she cannot sit for very long, she cannot stand for very long, walking is for a few minutes before she has to sit down, lifting is with difficulty due to the pain and discomfort in the arms and shoulders, handling of objects seems to be a difficult task. She seems to hear OK, speak OK, and traveling is OK except for having to sit for long time periods.

⁷ Exs. 3.17, 3.18, 3.21, 3.22, 3.23, 3.57, 3.58, 3.59.

⁸ Ex. 3.43.

⁹ All factual findings in this paragraph are based on Ex. 3.56.

¹⁰ Exs. 3.76, 3.77.

¹¹ Exs. 3.24, 3.25, 3.99, 3.100. Dr. B has seen Ms. H since 2006 or before (Ex. 3.35).

¹² All factual findings for the remainder of this paragraph are based on Ex. 3.32.

¹³ Exs. 3.25, 3.100.

¹⁴ Ex. 3.25, 3.100.

¹⁵ Ex. 3.30.

Ms. H graduated from high school and attended two years of college.¹⁶ She is certified as an emergency medical technologist (EMT) and as a nursing assistant (CMT).¹⁷ Ms. H was employed as a cashier in 2005, as an administrative assistant from 2005 - 2009, and as a "residential specialist" with the Salvation Army from 2007 - 2010.¹⁸ Ms. H has not worked since returning to Alaska from Hawaii in 2013.¹⁹

An "employability determination" conducted by the Hawaii Department of Human Services on July 15, 2013 found that Ms. H is capable of performing sedentary work.²⁰

Ms. H testified at hearing that she has lived in Alaska for about thirty years and currently lives with her daughter and her daughter's children.²¹ Her daughter does most of the chores, but Ms. H is able to wash dishes. She is sometimes able to do her own laundry, but at other times her daughter must do it for her. Ms. H is mostly able to dress herself, but her daughter must put her socks on for her. When her back is really bad, Ms. H has incontinence, and needs assistance with toileting. Ms. H has a hard time sitting because of her back, and she must change position frequently and lean forward often to stretch her back. She estimates that on a good day she can sit for about 60-90 minutes. She does not have a cane, but does use a walking stick. She has trouble walking but can walk about half a mile when she is shopping at a large store like Safeway or Wal-Mart. She thinks she can lift about ten pounds. She is not currently taking any medications, and is not regularly seeing a doctor, because she has no health insurance and does not have the money to pay cash for prescriptions or medical services. She self-treats herself by taking hot baths, using a heating pad, and stretching. She can drive but has not done much driving recently. She is able to visit friends about once per month.

B. Relevant Procedural History

Ms. H applied for Interim Assistance on July 18, 2013.²² On October 7, 2013 the Division denied Ms. H's application because her medical condition did not appear to satisfy the Adult Public Assistance program or Social Security Administration's (SSA's) disability criteria.²³ The

¹⁶ Ex. 3.69.

¹⁷ Ex. 3.69.

¹⁸ Exs. 3.65, 3.103.

¹⁹ Ex. 3.69; M H hearing testimony.

²⁰ Ex. 3.67.

²¹ All factual findings in the remainder of this section are based on Ms. H's hearing testimony.

²² Ex. 2.

²³ Exs. 4 - 5.2, 6.1.

Division's notice further stated that, because it did not appear likely that Ms. H would be found disabled by SSA, she was not eligible for Interim Assistance.²⁴

Ms. H requested a hearing on October 15, 2013.²⁵ The hearing was held on November 14, 2013. Ms. H participated in the hearing by phone, represented herself, and testified on her own behalf. Public Assistance Analyst Jeff Miller participated by phone and represented the Division. Jamie Lang, a disability adjudicator with the Alaska Department of Labor and Workforce Development, participated by phone and testified on behalf of the Division. The record closed at the end of the hearing.

III. Discussion

A. *The Three-Step Interim Assistance Disability Determination Process*

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”²⁶ Applicants who are under the age of 65 years are required to apply to the Social Security Administration and qualify for Supplemental Security Income (SSI) as a prerequisite to receiving Adult Public Assistance benefits.²⁷ Once an applicant is approved for SSI, he or she is then eligible to receive Adult Public Assistance benefits.²⁸

Interim Assistance is a monthly payment in the amount of \$280 provided to Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve their Supplemental Security Income applications.²⁹ In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”³⁰ An Interim Assistance applicant has the burden of proving, by a preponderance of the evidence, that he or she is likely to be found disabled by the SSA.³¹

The SSA uses a five-step evaluation process in making its disability determinations.³² Each step is considered in order, and if the SSA finds the applicant not to be disabled at steps one, two, or four, it does not consider subsequent steps.³³

²⁴ Exs. 4 - 5.2, 6.1.

²⁵ Ex. 6.2.

²⁶ A.S. § 47.25.430.

²⁷ 7 AAC § 40.170(a). 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).

²⁸ 7 AAC § 40.030(a); 7 AAC § 40.170(a).

²⁹ 7 AAC § 40.170(a) and (b); A.S. § 47.25.455.

³⁰ 7 AAC § 40.180(b)(1).

³¹ See 2 AAC § 64.290(e); see also *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985) (the party who is seeking a change in the status quo bears the burden of proof); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, 1179 n. 14 (Alaska 1986) (the standard of proof in an administrative proceeding, unless otherwise specified, is the preponderance of the evidence standard).

³² 20 C.F.R. § 416.920.

The Division uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.³⁴ The first step looks at the applicant's current work activity. If the applicant is performing "substantial gainful activity," the applicant is not disabled.³⁵ If the applicant is not performing "substantial gainful activity," it is necessary to proceed to step two.

The second step requires the evaluation of 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.³⁶ In order to be considered disabled, the impairment or combination of impairments must be severe,³⁷ and must be expected to result in death or must have lasted or be expected to last at least 12 months.³⁸ If the impairment is not severe or does not meet the duration requirement, then the applicant is not disabled. If the impairment is severe and meets the duration requirement, then it is necessary to proceed to step three.

The third step requires the evaluation of whether the impairment satisfies certain impairment-specific criteria (known as "Listings") adopted by the SSA.³⁹ If it does, the applicant is disabled⁴⁰ and qualifies for Interim Assistance. If the applicant's impairment does not meet or equal one of the SSA Listings, the applicant does not qualify for Interim Assistance.⁴¹

B. Standard of Review

At this stage, the agency is still in the process of applying its expertise and reaching its final decision. During this internal appeal process, the Administrative Law Judge who issues the proposed decision, and the Commissioner who will make the final decision, may independently weigh the evidence and reach a different conclusion than the Division staff. This is the case even if the original decision is factually supported and has a reasonable basis in the law. While the Commissioner may *choose* to give weight to the judgments and policy

³³ 20 C.F.R. § 416.920(a)(4).

³⁴ See *In re M.H.*, OAH No. 12-0688-APA (Commissioner of Health and Social Services 2012). This decision was reversed by an Anchorage Superior Court judge in 2013. However, the Superior Court's legal analysis is not binding on the Division except in that particular case, and the Division has appealed the Superior Court's decision to the Alaska Supreme Court.

³⁵ 20 C.F.R. § 416.920(a)(4)(i).

³⁶ 20 C.F.R. § 416.908.

³⁷ 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).

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

³⁹ See 20 C.F.R. Part 404, Subpart P, Appendix 1 (hereafter "Appendix 1").

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

⁴¹ See *In Re M.H.*, OAH Case No. 12-0688-APA.

directions proposed by his staff, as the department's chief executive he is never *obliged* to do so.⁴² Moreover, evidence was received at hearing that was not available to the Division's reviewer. This necessitates a fresh look at the merits of the case. Accordingly, no deference will be given to factual determinations made by the Division prior to hearing.

C. *Application of the Interim Assistance Criteria to This Case*

1. Step 1 - Is the Applicant Engaged in Substantial Gainful Activity?

The first step of the disability analysis asks whether the applicant is performing "any substantial gainful activity."⁴³ Ms. H testified that she is not currently working, and the Division did not dispute this. Accordingly, Ms. H has proven that she is not currently engaged in substantial gainful activity and has satisfied Step 1 of the three-step Interim Assistance analysis.

2. Step 2 - Are the Severity and Durational Requirements Satisfied?

a. Severity

At step two of the sequential evaluation process, the adjudicator must determine which of the applicant's impairments, if any, are "severe."⁴⁴ An impairment should be found to be "non-severe" only when the evidence establishes a "slight abnormality" that has "no more than a minimal effect" on an individual's ability to work.⁴⁵ The inquiry at Step 2 is "a de minimis screening device to dispose of groundless claims."⁴⁶ If an adjudicator is unable to clearly determine the effect of an impairment or combination of impairments on the individual's ability to do basic work activities, the sequential evaluation should not end with the Step 2 "severity" evaluation.⁴⁷ Further, even if no single impairment is found to be severe under this lenient standard, each impairment still must be considered in combination with all other impairments to determine whether the combined effect of multiple impairments is medically severe.⁴⁸

⁴² See, e.g., *In re Alaska Medical Development – Fairbanks, LLC*, OAH No. 06-0744-DHS, Decision & Order at 5-6 & n.70 (issued April 18, 2007; adopted by Commissioner of Health & Social Services in relevant part, Decision After Remand, Oct. 9, 2007) (<http://aws.state.ak.us/officeofadminhearings/Documents/DHS/DHS060744.pdf>); *In re Rockstad*, OAH No. 08-0282-DEC, Decision & Order at 5 (Commissioner of Environmental Conservation, adopted Nov. 17, 2008) (<http://aws.state.ak.us/officeofadminhearings/Documents/DEC/DEC080282.pdf>).

⁴³ 20 CFR § 416.972 defines "substantial gainful activity" as work that (a) involves doing significant and productive physical or mental duties, and (b) is done (or intended) for pay or profit.

⁴⁴ 20 C.F.R. § 404.1521.

⁴⁵ *Social Security Ruling (SSR) 85-28*, 1985 WL 56856 at 3 (SSA 1985); see also *Yuckert v. Bowen*, 841 F.2d 303, 306 (9th Cir. 1988); *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2006); *Kirby v. Astrue*, 500 F.3d 705, 707–08 (8th Cir. 2007); 20 C.F.R. §§ 404.1521(a), 416.921(a).

⁴⁶ *Bowen v. Yuckert*, 482 U.S. 137 (1987).

⁴⁷ SSR 85-28.

⁴⁸ 20 C.F.R. § 404.1523 states:

In determining whether your physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the

The Division acknowledges that Ms. H's impairments are "severe" as defined by the applicable regulations.⁴⁹ Accordingly, Ms. H's physical impairments satisfy the first half of Step 2 of the disability analysis.

b. Duration

The next step, pursuant to 20 C.F.R. 416.909, is to decide whether or not Ms. H's impairments have lasted, or can be expected to last, for a continuous period of at least 12 months. In this regard, it is important to note that the 12 month duration requirement of 20 C.F.R. 416.909 is retrospective as well as prospective; it looks back in time as well as forward in time (i.e. the impairment "must have lasted or must be expected to last").

The Division did not dispute that Ms. H's physical impairments have existed for more than 12 months.⁵⁰ The medical evidence confirms that Ms. H's impairments satisfy the 12 month durational requirement. Accordingly, Ms. H satisfies the second half of Step 2 of the disability analysis.

3. Step 3 - Whether the Applicant "Meets the Listing"

The final step of the Interim Assistance program's disability analysis is to determine whether an applicant's impairments meet or equal the criteria of the listing of impairments contained in the SSA's regulations at 20 C.F.R. Part 404, Subpart P, Appendix 1 ("the Listings"). The applicant bears the burden of establishing that his or her impairment satisfies the requirements of a "Listings" impairment.⁵¹ To meet a Listing, an impairment must meet *all* of the Listing's specified criteria; an impairment that manifests only some of these criteria, no matter how severely, does not qualify.⁵²

Dr. B found that Ms. H has four impairments - degenerative disk disease (DDD), degenerative joint disease (DJD), rheumatoid arthritis (RA), and chronic obstructive pulmonary disease (COPD).⁵³ The Social Security Administration has separate disability criteria ("Listings") for each of these impairments. Accordingly, each of the four impairments must be analyzed separately.

law, we will consider the combined effect of all of your impairments without regard to whether any such impairment, if considered separately, would be of sufficient severity. If we do find a medically severe combination of impairments, the combined impact of the impairments will be considered throughout the disability determination process.

⁴⁹ Ex. 5.2.

⁵⁰ Ex. 5.2; Jamie Lang hearing testimony.

⁵¹ *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).

⁵² *Sullivan, supra*, 493 U.S. at 530.

⁵³ Exs. 3.25, 3.100.

a. Ms. H's Degenerative Disk Disease

The Social Security disability system classifies Ms. H's chronic back pain / degenerative disk disease under the Musculoskeletal Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.04. This Listing, titled "Disorders of the Spine," provides in relevant part:⁵⁴

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

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or

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

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

The evidence in the record indicates that Ms. H's back pain / degenerative disk disease satisfies *one* of the criteria of Section 1.04A (she has some limitation of motion in the spine). However, there is no medical evidence of compromise of a nerve root, nerve root compression, muscle atrophy, reflex loss, or positive result on a straight-leg raising test.

With regard to Section 1.04B, there is no medical evidence of spinal arachnoiditis.

With regard to Section 1.04C, although there is no evidence of lumbar spinal stenosis, Ms. H's ability to walk is clearly impaired. However, under the SSA's regulations, the "inability to ambulate effectively" has very specific criteria, and is defined in relevant part as:⁵⁵

(1) Definition. Inability to ambulate effectively means an extreme limitation of the ability to walk; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the

⁵⁴ Appendix 1, §1.04.

⁵⁵ Appendix 1, §1.00(B)(2)(b).

use of a hand-held assistive device(s) *that limits the functioning of both upper extremities* [Emphasis added].

(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 Therefore, examples 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

Ms. H's testimony regarding her difficulty walking was credible. However, Ms. H testified that she can walk up to a half-mile while shopping, and there is no indication in her medical records or testimony that she requires use of a wheelchair, a walker, two crutches, or two canes. Accordingly, Ms. H does not satisfy the criteria of Listing Section 1.04(C).

In summary, Ms. H's degenerative disk disease does not satisfy the specific criteria of SSA Listing Section 1.04. Accordingly, Ms. H cannot be found to be disabled on that basis.

b. Ms. H's Degenerative Joint Disease (DJD)

The Social Security disability system classifies Ms. H's joint pain / degenerative joint disease (DJD) under the Musculoskeletal Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, Section 1.02. Section 1.02 requires in relevant part as follows:

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

- A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b; or
- B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00(B)(2)(c).

Ms. H can be found to be disabled by her lower extremity joint pain / DJD, under Section 1.02(A), above, if she is unable to ambulate effectively as defined by Listing Section 1.00(B)(2)(b). However, as discussed in the preceding subsection, is no evidence in the record indicating that Ms. H is unable to ambulate effectively as defined by Listing Section 1.00(B)(2)(b).⁵⁶ Accordingly, Ms.

⁵⁶ See discussion in Section III(C)(3)(a), above.

H's lower extremity joint pain does not satisfy the "inability to ambulate" requirement of Listing 1.02(A).

Ms. H can be found to be disabled by her upper extremity joint pain / DJD, under Section 1.02(B), above, if she is unable to perform fine and gross movements effectively, Listing Section 1.00(B)(2)(c), titled "What we mean by inability to perform fine and gross movements effectively," provides in relevant part as follows:

Inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities To use their upper extremities effectively, individuals must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. Therefore, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level.

Here, although Ms. H is clearly impaired by her upper extremity joint pain, there is no evidence in the record indicating that she is unable to effectively perform fine and gross movements to the extent required by Listing Section 1.00(B)(2)(c), above. Accordingly, Ms. H's upper extremity joint pain does not satisfy the "inability to perform fine and gross movements" requirement of Listing 1.02(B).

In summary, Ms. H's degenerative joint disease does not satisfy the specific criteria of SSA Listing Section 1.02. Accordingly, Ms. H cannot be found to be disabled on that basis.

c. Ms. H's Arthritis

The Social Security disability system classifies Ms. H's arthritis under the "Immune System Disorders" Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 14.00.⁵⁷ The listing for arthritis, Listing § 14.09, requires:

- A. Persistent inflammation or persistent deformity of:
 - 1. One or more major peripheral weight-bearing joints resulting in the inability to ambulate effectively (as defined in 14.00C6); or
 - 2. One or more major peripheral joints in each upper extremity resulting in the inability to perform fine and gross movements effectively (as defined in 14.00C7).

or

- B. Inflammation or deformity in one or more major peripheral joints with:
 - 1. Involvement of two or more organs/body systems with one of the organs/body systems involved to at least a moderate level of severity; and

⁵⁷ See 20 C.F.R. Part 404, Subpart P, Appendix 1, § 14.00(D)(6).

2. At least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss).

or

C. Ankylosing spondylitis or other spondyloarthropathies, with:

1. Ankylosis (fixation) of the dorsolumbar or cervical spine as shown by appropriate medically acceptable imaging and measured on physical examination at 45° or more of flexion from the vertical position (zero degrees); or

2. Ankylosis (fixation) of the dorsolumbar or cervical spine as shown by appropriate medically acceptable imaging and measured on physical examination at 30° or more of flexion (but less than 45°) measured from the vertical position (zero degrees), and involvement of two or more organs/body systems with one of the organs/body systems involved to at least a moderate level of severity.

or

D. Repeated manifestations of inflammatory arthritis, with at least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss) and one of the following at the marked level:

1. Limitation of activities of daily living.

2. Limitation in maintaining social functioning.

3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

The medical evidence in the record does not satisfy the criteria of subsections "A," "B," "C," or "D" of Listing § 14.09. Accordingly, Ms. H cannot be found to be disabled based on her arthritis.

d. Ms. H's Chronic Obstructive Pulmonary Disease (COPD)

Ms. H's Chronic Obstructive Pulmonary Disease (COPD) is analyzed under "Category of Impairments, Respiratory System" (20 C.F.R. Part 404, Subpart P, Appendix 1, § 3.00 *et. seq.*). Section 3.00 generally requires a series of spirometric tests (spirometry), and/or arterial blood gas studies (ABGS), in order to satisfy the requirements of the Listing. The Division's Medical Reviewer correctly noted that there are no such tests or studies in the record sufficient to satisfy Section 3.00. Accordingly, Ms. H's COPD does not meet the specific requirements of the SSA's Listing for COPD, and Ms. H thus cannot be found to be disabled based on her COPD.

IV. Conclusion

As an applicant for Interim Assistance, Ms. H has the burden of proving, by a preponderance of the evidence, that she is likely to be found disabled by SSA. However, the preponderance of the evidence demonstrates that Ms. H does not satisfy step three of the SSA disability determination process (*i.e.* that she meets or equals the SSA listings with regard to her severe physical impairments). Accordingly, the Division correctly determined that Ms. H is not

currently eligible for Interim Assistance. The Division's decision denying Ms. H's application for Interim Assistance is therefore affirmed.

DATED this 5th day of March, 2014.

Signed _____
Jay D. Durych
Administrative Law Judge

Adoption

The undersigned, by delegation from of 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 14th day of March, 2014.

By: *Signed* _____
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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