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

In The Matter Of:)
)
R. D. A.,) OHA Case No. 11-FH-347
)
Applicant for Interim Assistance Benefits.) DPA Case No.
_____)

FAIR HEARING DECISION

I. Introduction

R. D. A. applied for Interim Assistance on June 14, 2011.¹ He provided the Division of Public Assistance (DPA or Division) with an AD2 form, which is a report titled Preliminary Examination for Interim Assistance. This report was signed by Dr. Susan Dillon.² The Division denied Mr. A.'s application.³ Mr. A. requested a Fair Hearing.⁴ Based on the evidence presented, the Division's decision denying Mr. A.'s application for Interim Assistance is reversed.

II. Facts

Mr. A. was 49 years old as of the date of the hearing.⁵ He has a high school diploma and two years of college courses in aviation and business.⁶ He has been diagnosed with hepatitis C, and his doctors believe it is very likely that he also has cirrhosis.⁷ He has also

¹ Exhibit 2.
² Exhibit 3.2 – 3.3.
³ Exhibit 4 This original notice was deficient, but a corrected notice listing the proper Interim Assistance Manual section was subsequently sent to Mr. A.. Exhibit 11.
⁴ Exhibit 5.1.
⁵ Testimony of Mr. A..
⁶ *Id.*
⁷ Exhibits A-4; A-34; 3.17.

been diagnosed with depression and anxiety.⁸ Mr. A.'s illnesses cause him widespread joint and muscle pain, and fatigue.⁹ He also has a history of heart disease and kidney stones.¹⁰

Mr. A. described his symptoms as feeling like he has a terrible flu. He testified that he has aching joints and muscles, and that he is constantly tired. He said that on a good day, he will wake up around 9:00 a.m. He takes care of his brother's horses and chickens, and feeds the dogs.¹¹ He then rests for 30 minutes to an hour. At around 12:00 p.m., he takes a nap for one to two hours. After he wakes up from this nap, Mr. A. collects eggs from the chickens again, makes lunch, and reads. He then rests some more. He takes a second nap for an hour or longer at about 5:00 p.m. After waking from this nap, Mr. A. will do household chores and make dinner. He then reads for a while before going to sleep between 9:00 p.m. and 10:00 p.m. On one or two days a week, Mr. A. has to split firewood for heating.

Mr. A. testified that on a bad day, he mostly just stays in bed. He said that in a typical month, about half of his days are bad days.

Mr. A. is currently unemployed. His most recent job was during the summer of 2009 when he worked at a goldmine as an underwater diver. Before that, he had worked off and on as a plumber. He has also held a variety of other jobs including being a store manager, a warehouse manager, and a longshoreman.

III. Discussion

A. Interim Assistance Evaluation Using the SSA's Five Step Analysis

Interim Assistance is a benefit available to individuals while they are waiting for the Social Security Administration (SSA) to rule on their application for Supplemental Security Income (SSI).¹² Among other requirements, to receive Interim Assistance an applicant must be "likely to be found disabled by the Social Security Administration."¹³ The person

⁸ Exhibits A-4, A-10; A-29; A-34

⁹ Exhibits A-4, A-10; Testimony of Mr. A..

¹⁰ Exhibit A-9; Testimony of Mr. A..

¹¹ Mr. A. lives in a cabin on his brother's property.

¹² 7 AAC 40.170(b); 7 AAC 40.375.

¹³ 7 AAC 40.180(b)(1).

seeking to obtain benefits has the burden of proving that he or she is likely to be found disabled by the SSA.¹⁴

The SSA uses a five-step evaluation process in making its disability determinations.¹⁵ Each step is considered in order, and if the SSA finds the applicant either disabled or not disabled at any step, it does not proceed to the subsequent steps.¹⁶

The first step in the disability analysis looks at the applicant's current work activity. If the applicant is performing "substantial gainful activity," the SSA will find that the applicant is not disabled.¹⁷ This finding is made regardless of the applicants' medical condition, age, education, or work experience.¹⁸

At step two, the SSA considers the severity of the applicant's impairment. In order to be considered disabled, the impairment or combination of impairments must be severe, and must be expected to result in death or must have lasted or be expected to last at least twelve (12) months.¹⁹ If the impairment is not severe under this definition, then the applicant is not disabled.

At step three, the SSA looks at whether the impairment meets or equals one of the listings adopted by the SSA.²⁰ If it does, the applicant is considered to be disabled.²¹

For applicants who are not determined to be disabled at step three, the SSA goes on to step four and looks at the applicant's ability to perform his or her past relevant work.²² If the applicant is able to perform his or her past relevant work, the applicant is not disabled.

Finally, at step five, the SSA looks at the applicant's capacity for work, age, education, and work experience to determine whether the applicant can perform other work in the national economy.²³

The Division agrees that, under this five-step analysis, Mr. A. is not engaged in substantial gainful activity (step 1), has a severe impairment of more than 12 months

¹⁴ *State v. Decker*, 700 P.2d 483, 485 (Alaska 1985) (the burden of proof is on the party seeking a change in the status quo).

¹⁵ 20 CFR §416.920.

¹⁶ 20 CFR §416.920(a)(4).

¹⁷ 20 CFR §416.920(a)(4)(i).

¹⁸ 20 CFR §416.920(b).

¹⁹ 20 CFR § 416.920(a)(4)(ii); 20 CFR §416.909.

²⁰ See 20 CFR § 404, Subpart P, Appendix 1 (hereafter "Appendix 1").

²¹ 20 CFR § 416.920(a)(4)(iii).

²² 20 CFR § 416.920(a)(4)(iv).

²³ 20 CFR § 416.920(a)(4)(v).

duration (step 2), and cannot return to his past work (step 4). Thus, the questions for this decision are whether Mr. A. is disabled at either step 3 or step 5.

B. Step 3 of the Disability Analysis.

At step 3, the SSA looks at whether the applicant's medical condition meets or equals one of the listings in 20 CFR § 404, Subpart P, Appendix 1 (Appendix 1). The applicable listing for hepatitis C is 5.05 - Chronic Liver Disease. This listing contains seven alternate means for meeting the listing for chronic liver disease (5.05A – 5.05G). Ms. Ladner testified that, based on her review of Mr. A.'s medical record, he did not meet or equal this listing.

Mr. A.'s position is that his condition:

may not meet the specific criteria found in the listing, but his symptoms are equivalent. He experiences frequent pain, requiring narcotic pain relief. His sleep is non-restorative and he feels sick, nauseous, and exhausted every day. Spurts of activity are followed by extended bed rest. He recently discovered a large unexplained bruise on his left flank and has experienced itching on his arms, and legs, both classic symptoms of liver disease.^[24]

The parties do not dispute that Mr. A. has chronic liver disease. The dispute is over whether that disease is sufficiently severe to meet or equal the SSA listing for liver disease. Mr. A. has not provided any evidence or argument other than his conclusory statement that his symptoms equal the specific requirements of the listing. Mr. A. has therefore not met his burden of proof to show that he is disabled at step 3.

C. Step 5 of the Disability Analysis.

Both parties agree that Mr. A. cannot perform his past relevant work. Accordingly, it is next necessary to determine whether he can perform other jobs that exist in significant numbers in the national or regional economy. At this stage, however, the burden of proof shifts to the Division to demonstrate that jobs which Mr. A. is capable of performing exist in significant numbers.²⁵

The Division asserted that Mr. A. is capable of performing sedentary work. The Division did not call a vocational expert as a witness. However, Ms. Ladner testified that sedentary work typically requires less lifting, involves sitting for about six hours a day, with another two hours of walking or standing. She stated that a typical work day would have

²⁴ Mr. A.'s Prehearing Memorandum at 3.

²⁵ Office of Hearings and Appeals, Case No. 11-FH-134, page 38 (Dept. of Health and Social Services 2011).

two hours of work followed by a 15 minute break and then another two hours of work before a lunch break. After a 30 or 60 minute lunch break, the employee would work another two hours, followed by a 15 minute break, followed by another two hours of work before the end of the work day.

Mr. A. testified that on good days he required two thirty minute breaks during the work day, in addition to a one or two hour nap around lunch time. He also testified that about half his days are bad days when he mostly just stays in bed. He testified that he would need at least five sick days per month. Mr. A. also stated that he has memory and confusion problems which his doctor told him were symptoms of hepatitis. Mr. A.'s testimony about his symptoms' impact on his ability to work is partly supported by his medical records, which reflect that he has reported fatigue and pain to his treating physicians.²⁶

The work schedule that Mr. A. would require is thus significantly different from what the Division asserts is a typical day of sedentary work.²⁷ Accordingly, the Division has not met its burden of proving that Mr. A. is capable of performing sedentary work as the Division has defined that type of work. Although there may be jobs in the economy that could accommodate Mr. A.'s rest requirements, the Division has not shown what those jobs are or that they exist in substantial numbers. Accordingly, the Division erred when it denied Mr. A.'s application for Interim Assistance.

IV. Conclusion

The Division agreed that Mr. A. is not engaged in substantial gainful activity, that he has a severe impairment, and that he cannot return to his prior occupation. Mr. A. failed to prove that his impairment meets or equals a listing in the SSA's listing of impairments. However, the Division has not shown that Mr. A. is able to perform any job that exists in substantial numbers in the national economy. Accordingly, the SSA is likely to find Mr. A. disabled, and the Division was therefore not correct to deny Mr. A.'s application for Interim Assistance benefits.

²⁶ No evidence was presented to rebut Mr. A.'s testimony concerning his need for lengthy breaks during the work day, or his need for frequent sick days each month.

²⁷ It is assumed for purposes of this decision that a vocational expert would confirm Ms. Ladner's testimony about the work requirements for sedentary work.

