

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

In the Matter of	)	
	)	OAH No. 13-1509-APA
C J	)	Division No.
_____	)	

**FAIR HEARING DECISION**

**I. Introduction**

C J applied for Interim Assistance on July 22, 2013.<sup>1</sup> A disability adjudicator employed by the Division of Public Assistance (Division) concluded that Mr. J was physically impaired, but that he did not qualify for Interim Assistance. The Division notified Mr. J that his application was denied. He requested a hearing.

Mr. J’s hearing was held on November 13, 2013. Mr. J represented himself and testified on his own behalf. Mr. J was assisted at hearing by S N, with the Independent Living Center. Terri Gagne, Public Assistance Analyst with the Division, represented the Division. Jamie Lang, the Division’s disability adjudicator, testified on behalf of the Division. The record was held open after the hearing to allow the parties to submit additional information.<sup>2</sup>

This decision concludes that Mr. J is severely physically impaired and that his impairment meets the 12-month durational requirement. However, Mr. J’s physical impairment does not meet or equal the Social Security disability listings. In addition, while he is unable to perform his previous relevant work as a chef, he is capable of performing at least sedentary work. He therefore did not prove by a preponderance of the evidence that he satisfies the Interim Assistance program’s eligibility requirement that he be “likely to be found disabled by the Social Security Administration.”<sup>3</sup> The Division’s decision denying his Interim Assistance application is affirmed.

**II. Facts<sup>4</sup>**

The following facts were established by a preponderance of the evidence.

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<sup>1</sup> Ex. 1.

<sup>2</sup> Mr. J was provided an opportunity to submit the results from a recent evaluation that was conducted by Dr. Paul Turner for Mr. J’s current Social Security disability application. Mr. J was unable to procure a copy of that evaluation. This decision is therefore unable to take that evaluation into account.

<sup>3</sup> See 7 AAC 40.180(b)(1).

<sup>4</sup> The following facts are taken from Mr. J’s testimony unless stated otherwise.

Mr. J is 34 years old.<sup>5</sup> He has a high school education and is literate in English.<sup>6</sup> Mr. J has worked as a chef in restaurants since 2002, which involved cooking, standing on his feet all day, frequently lifting heavy items, supervising kitchen staff, creating menus, and ordering supplies. Prior to that time, he worked both as a cook and in a foundry.<sup>7</sup>

Mr. J has a medical history that involves tingling and numbness in his left lower leg, which began approximately five or six years ago. He had an episode of vertigo that persisted for seven to ten days several years ago. He also has back pain, and thoracic kyphotic scoliosis.<sup>8</sup>

In early June 2013, Mr. J experienced a prolonged headache, mental confusion, weakness, and right-sided weakness. This caused him to seek medical attention. He has since had several MRIs performed, which showed brain lesions and thoracic spine plaque. He has had a cerebrospinal fluid sample taken, which is indicative of multiple sclerosis. He is diagnosed with multiple sclerosis. His medically documented symptoms included unsteadiness (both gait and station) diminished reflexes, and decreased sensory perception in his left lower leg. At the end of August 2013, his gait was ataxic and he used a cane.<sup>9</sup> He also reported symptoms, both to his doctors and at hearing, of left-sided facial tingling and numbness, fatigue, unsteadiness, including having fallen on a level surface, double vision, difficulty speaking, and tremors in his right arm and leg.<sup>10</sup> His doctor has concluded that “[h]is MRI and symptoms are consistent with relapsing remitting MS.”<sup>11</sup> Mr. J’s application for assistance was supported by a July 23, 2013 “Preliminary Examination for Interim Assistance” form. That form stated his diagnosis was “Relapsing, Remitting Multiple Scleroris.” The form stated he was not expected to recover, that the condition was chronic, but there would be periods of time when he would be less symptomatic.<sup>12</sup>

As of his hearing date, Mr. J is taking a drug to control his MS that has significant side effects. This is the second drug he has tried. He had to stop the first drug due to its side effects. Mr. J continues to experience mental confusion, pain, ongoing vision, imbalance, weakness, requires the use of a cane, is unable to walk for more than a short distance without resting, and is

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<sup>5</sup> Ex. 1.

<sup>6</sup> Ex. 2.64.

<sup>7</sup> Exs. 2.62 – 2.63.

<sup>8</sup> Ex. A, pp. 4, 7; Ex. 2.48.

<sup>9</sup> Exs. 2.5 – 2.6, 2.9 – 2.10, 2.42; A, pp. 5 – 11.

<sup>10</sup> Ex. A, pp. 5 – 11; J testimony.

<sup>11</sup> Ex. A, p. 11.

<sup>12</sup> Exs. 2.65 – 2.66.

extremely fatigued after slight activity.<sup>13</sup> Mr. J does not have medical insurance coverage. He has received some free medical care, but has not had vision studies or strength studies conducted. He did participate in a psychological evaluation, as part of his application for Social Security disability, but was not able to obtain a copy of that evaluation to submit for consideration in this case.

Jamie Lang, the Division’s medical reviewer, determined that Mr. J was severely impaired by his multiple sclerosis, but was not likely to meet the Social Security Administration’s (SSA) disability criteria. She stated that there was not sufficient medical information in the record to determine if his condition met or equaled the Social Security disability listing requirements for multiple sclerosis. In addition, she opined that he was capable of light level work, regardless of his multiple sclerosis.<sup>14</sup> The Division then denied his application for Interim Assistance.<sup>15</sup>

### **III. Discussion**

#### ***A. The Five Step Disability Determination Process***

The Adult Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”<sup>16</sup> Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income (SSI) benefits.<sup>17</sup> Once an applicant is approved for SSI benefits, he or she is then eligible to receive Adult Public Assistance benefits.<sup>18</sup>

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 SSA to approve their SSI application.<sup>19</sup>

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”<sup>20</sup> An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.<sup>21</sup>

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<sup>13</sup> J testimony.

<sup>14</sup> Lang testimony; Exs. 2.0a – 2.0c.

<sup>15</sup> Ex. 2.161.

<sup>16</sup> AS 47.25.430.

<sup>17</sup> 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the SSI standards are not required to apply for SSI benefits. 7 AAC 40.170(a).

<sup>18</sup> 7 AAC 40.030(a); 7 AAC 40.170(a).

<sup>19</sup> 7 AAC 40.170(a) and (b); AS 47.25.455.

<sup>20</sup> 7 AAC 40.180(b)(1).

<sup>21</sup> 7 AAC 49.135.

The SSA uses a five-step evaluation process in making its disability determinations.<sup>22</sup> Each step is considered in order.<sup>23</sup> In 2012, a Commissioner’s level decision held that the Division should only use the first three steps of the SSA disability determination process, and not the full five-step evaluation process, in deciding whether an applicant qualifies for Interim Assistance.<sup>24</sup> However, that decision was appealed to the Superior Court. The Superior Court “vacate[d] the Commissioner’s decision and remand[ed] [the case] to the Department for a disposition in accordance with requirements set forth by the SSA 5-part test.”<sup>25</sup> The Superior Court decision is persuasive authority for the point that the full five-step evaluation process should be used in these Interim Assistance cases. Accordingly, this decision will proceed to steps four and five, if the applicant does not qualify at step three.

Each step of the five-step evaluation process is considered in order, and if the SSA finds the applicant either disabled or not disabled at any step, it does not consider subsequent steps.<sup>26</sup> The first step in this process looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the SSA will find the applicant is not disabled.<sup>27</sup>

At step two, the SSA considers the severity and duration of the applicant’s impairment. Medical evidence, which consists of “signs, symptoms, and laboratory findings, not only [the applicant’s] statement of symptoms,” is required to establish an applicant’s impairment.<sup>28</sup> In order to be considered disabled, the impairment or combination of impairments must be severe,<sup>29</sup> must be expected to result in death, or must have lasted or be expected to last at least 12 months.<sup>30</sup> 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 requirements, then it is necessary to proceed to step three.

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<sup>22</sup> 20 C.F.R. § 416.920.

<sup>23</sup> Under the SSA disability determination process, an applicant who satisfies both steps one and two goes on to step three. An applicant who does not satisfy step three goes on to step four and possibly step five. 20 C.F.R. § 416.920(a)(4).

<sup>24</sup> *In re M. H.*, OAH Case No. 12-0688-APA. (Commissioner of Health and Social Services 2012) <http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf> at 2.

<sup>25</sup> *Gross v. State, Dept. of Health and Social Services*, Anchorage, Alaska Superior Court Case No. 3AN-12-0938 CI (Marston, J., September 26, 2013). While a Petition for Review is currently pending in the Alaska Supreme Court, the Superior Court decision has not been stayed. (Alaska Supreme Court Case No. S-15339).

<sup>26</sup> 20 C.F.R. § 416.920(a)(4).

<sup>27</sup> 20 C.F.R. § 416.920(a)(4)(i).

<sup>28</sup> 20 C.F.R. § 416.908.

<sup>29</sup> 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).

<sup>30</sup> 20 C.F.R. § 416.920(a)(4)(ii); 20 C.F.R. § 416.909.

The third step requires the evaluation of whether the impairment meets or equals one of the disability listings adopted by the SSA. By regulation, the Division does not use the most current version of the SSA disability listings. Instead, it is required to use the “Social Security Administration disability criteria for the listings of impairments described in 20 C.F.R. 404, Subpart P, Appendix 1, as revised as of April 1, 2005, and adopted by reference.”<sup>31</sup> If an applicant’s impairment meets or equals one of the applicable SSA disability listings, the applicant is disabled<sup>32</sup> and qualifies for Interim Assistance. If the applicant’s impairment does not meet or equal one of the SSA listings, it is necessary to move on to step four.

At step four, which applies to applicants determined not to be disabled at step three, the SSA looks at the applicant’s capacity for work and past relevant work. If the applicant is able to perform his or her past relevant work, the applicant is not disabled.<sup>33</sup> If the applicant is unable to perform his or her past relevant work, it is necessary to proceed to step five.

Step five requires an answer to the question of whether the applicant is capable of performing other work. Answering this question requires the application of the Social Security medical vocational guidelines that include the evaluation of the applicant’s residual functional capacity, age, education, English literacy, and previous work experience.<sup>34</sup> If the applicant is not capable of performing other work, he or she is disabled.<sup>35</sup>

## ***B. Application of the Five Step Process***

### **1. Steps One – Three**

The Division’s decision to deny Mr. J’s application was based upon the review by Jamie Lang, its medical reviewer. She determined that Mr. J was not working and satisfied step one of the Social Security disability analysis. She determined that Mr. J also satisfied step two of the Social Security disability analysis (his conditions caused him to be severely impaired and had lasted or were expected to last for at least 12 months). She, however, determined that his

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<sup>31</sup> 7 AAC 40.180(b)(1)(B). The SSA disability listings are located at 20 C.F.R. Part 404, Subpart P, Appendix 1. The version of those listings in effect as of April 1, 2005 is located online at <http://www.gpo.gov/fdsys/pkg/CFR-2005-title20-vol2/pdf/CFR-2005-title20-vol2-part404-SubpartP-app1.pdf>. 7 AAC 40.180(b)(1)(B) was amended effective December 7, 2013 to incorporate the SSA disability listings which were in effect as of September 1, 2013. However, since the Division’s action in this case occurred before December 7, 2013, the decision uses the April 1, 2005 SSA disability listings.

<sup>32</sup> 20 C.F.R. § 416.920(a)(4)(iii) and (d).

<sup>33</sup> 20 C.F.R. § 416.920(a)(4)(iv).

<sup>34</sup> See 20 C.F.R. Part 404, Subpart P, App. 2, § 201.

<sup>35</sup> 20 C.F.R. § 416.920(a)(4)(v).

condition did not satisfy step three because it did not meet or equal the appropriate disability listings.

Mr. J unquestionably has multiple sclerosis, which affects his ability to function on a day to day basis. In order to meet or equal the SSA disability listing for multiple sclerosis, he must have medical documentation demonstrating that he has one of the following conditions:

- Disorganized motor function which requires that there be a “[s]ignificant and persistent disorganization of motor function in two extremities,” which can involve interference with walking (gait), standing (station), or “interference with the use of fingers, hands, and arms.”<sup>36</sup>
- Visual impairment (corrected vision in the best eye of 20/200 or less, contracted peripheral visual field in the better eye, or visual efficiency of 20 percent or less in the better eye after correction).<sup>37</sup>
- Mental impairment (evidence of a cognitive or affective decline, meeting specified parameters, which markedly affects day to day functioning).<sup>38</sup>
- “Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination” in areas known to be affected by multiple sclerosis.<sup>39</sup>

Mr. J, however, does not have medical documentation demonstrating that he satisfies the criteria for any of the above-listed conditions. He has no mental, vision, or motor function testing.

While there is medical documentation that he walks using a cane and with an ataxic gait, and that his gait and station are both affected, there is no medical evidence in the record showing that two extremities are involved: merely one extremity, being his left lower leg. Although Mr. J is credible regarding his symptoms, the necessary medical evidence to support his testimony is absent. He, therefore, has failed to prove that he meets or equals the SSA disability listing for multiple sclerosis.

## 2. Steps Four - Five

If a person does not meet or equal an SSA disability listing, the next step is to determine whether he or she can perform his or her previous relevant work. Mr. J has been working since

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<sup>36</sup> 20 C.F.R. § Part 404, Subpart P, Appendix 1, §§ 11.00C, 11.04B, 11.09A.

<sup>37</sup> 20 C.F.R. § Part 404, Subpart P, Appendix 1, §§ 2.02, 2.03, 2.04, 11.09B.

<sup>38</sup> 20 C.F.R. § Part 404, Subpart P, Appendix 1, §§ 11.09B, 12.02.

<sup>39</sup> 20 C.F.R. § Part 404, Subpart P, Appendix 1, § 11.09C.

2002 as a chef. This work involves lifting heavy weights and standing for eight hours. He is medically documented as having impaired gait and station, unsteadiness, and using a cane. These facts show that he is unable to perform his previous relevant work as a chef. Because he cannot perform his previous relevant work, it is necessary to proceed to step five of the SSA disability process, whether he can perform other work.<sup>40</sup> At this point, the burden shifts to the SSA to demonstrate that an applicant is capable of performing other work. The SSA uses the medical vocational guidelines to determine disability at this step when an applicant's limitations, including those imposed by pain, are exertional in nature.<sup>41</sup>

Ms. Lang testified that Mr. J was capable of light work. This category also includes sedentary work, which is the most restrictive category of work.<sup>42</sup> The SSA defines sedentary work as follows:

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.<sup>[43]</sup>

Mr. J testified regarding his vision problems, his unsteadiness, his mental confusion and his extreme fatigue after performing limited tasks. However, his testimony regarding his vision problems, his mental confusion, and his extreme fatigue is not supported by other medical evidence in the record. His difficulty with balance and standing would not make him unable to perform a sedentary job. In short, he has not made a showing that he cannot perform the most limited level of work – sedentary work.

The SSA medical vocational guidelines for an English literate individual in the 18 - 44 age range, who is limited to sedentary work, with a high school education, 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.<sup>44</sup>

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<sup>40</sup> 20 C.F.R. § 416.920(a)(4)(v).

<sup>41</sup> *See* 20 C.F.R. § 416.969a(b).

<sup>42</sup> 20 C.F.R. § 416.967(b).

<sup>43</sup> 20 C.F.R. § 416.967(a).

<sup>44</sup> 20 C.F.R. § Part 404, Subpart P, App. 2, § 201.27 – 29.

Mr. J is 34 years old. He is literate in English and has a high school diploma. Because he is capable of sedentary work, he falls under the medical vocational rules, which mandate a conclusion that he is not disabled.<sup>45</sup>

#### **IV. Conclusion**

Mr. J did not meet his burden of proving that he is likely to be found disabled by the Social Security Administration due to his physical impairments. As a result, the Division's decision to deny his application for Interim Assistance benefits is AFFIRMED.

DATED this 9th day of January, 2014.

Signed  
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Lawrence A. Pederson  
Administrative Law Judge

### **Adoption**

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

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

DATED this 23<sup>rd</sup> day of January, 2014.

By: Signed  
\_\_\_\_\_  
Name: Lawrence A. Pederson  
Title/Agency: Admin. Law Judge, DOA/OAH

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

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<sup>45</sup> See 20 C.F.R. § Part 404, Subpart P, App. 2, § 201.27 – 29.