

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

In the Matter of:)
)
 J L. C) OAH No. 13-1558-APA
) DPA Case No.
_____)

FAIR HEARING DECISION

I. Introduction

The issue in this case is whether J C satisfies the Interim Assistance program’s disability criteria. The Division of Public Assistance (Division) concluded that although Ms. C's diabetes constitutes a severe impairment, and although this impairment has lasted long enough to satisfy the 12 month durational requirement, it does not satisfy the specific criteria of the Social Security Administration's (SSA's) applicable impairment "Listing."¹ Accordingly, the Division denied Ms. C’s application for Interim Assistance.²

This decision concludes that Ms. C suffers from several severe impairments, and that these impairments satisfy the 12 month durational requirement. However, Ms. C's impairments do not currently satisfy the specific criteria of any of the SSA's applicable impairment "Listings." As a result, Ms. C 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. C’s application for Interim Assistance is therefore affirmed.

II. Facts

A. Ms. C’s Medical Condition, Functional Impairments, and Work History

Ms. C is 47 years old.⁴ She has diagnoses including diabetes (type II, uncontrolled), gastroesophageal reflux disease (GERD), diabetic peripheral neuropathy, hyperlipidemia, hypothyroidism, insomnia, liver damage due to pesticide poisoning, nausea, postherpetic neuralgia, and tinea corporis.⁵

In 2010 Ms. C suffered a significant head injury which required that she be intubated for about 12 hours.⁶ Following this she had two generalized tonic-clonic seizures.⁷

¹ Exs 3.2 - 3.3; Jamie Lang hearing testimony.
² Ex. 5.
³ 7 AAC 40.180(b)(1).
⁴ Ex. 1.
⁵ Exs. 3.48, 3.51.
⁶ Ex. 3.15.
⁷ Ex. 3.15.

During a medical appointment in February 2012 Ms. C reported that her feet were painful and numb like she had "had been standing on them for 120 hours."⁸

In July 2012 Ms. C was involved in an automobile accident and injured her left shoulder and hand (Ms. C is left-handed).⁹ One year later she was still experiencing occasional pain in that hand, especially when lifting items, but was able to perform fine movements such as typing.

In March 2013 Ms. C began having vision problems consisting of double vision, triple vision, graying vision, and shadowy objects.¹⁰ Her vision problems occur two to three times per day, and each episode lasts for about five minutes.¹¹ In June 2013 Ms. C reported to her doctor that she was having pain and a burning sensation in her legs.¹²

In July 2013 Ms. C completed the Division's *Disability and Vocational Report* form.¹³ Ms. C reported that her diabetes was out of control, and that she had severe vision problems and severe pain in her lower extremities.

Ms. C has a history of migraine headaches.¹⁴ However, as of September 18, 2013 she had not had one for 17 - 18 years.¹⁵

During an examination in September 18, 2013 Ms. C reported neck pain radiating into her arms.¹⁶ The medical report generated on that date summarized an MRI and an MRA of Ms. C's head and neck, of unknown date, as follows:¹⁷

1. [N]ormal flow void absent within the right vertebral artery extracranial . . . subtle nonspecific frontal lobe white matter flair hyperintensities. 2. Differential considerations include chronic small-vessel ischemic changes or demyelination. 3. Chronic mild-appearing paranasal sinus disease. MRA angioplasty of the neck: Findings suspicious for diminutive or occluded right vertebral artery. Differential considerations would include occlusion from dissection or thrombus . . . Bilateral M1 segments, middle cerebral artery distribution 50% stenosis . . . Focal stenosis of the P1 segment of the left posterior cerebral artery. 4. Diminutive intracranial right vertebral artery.

On October 23, 2013 Dr. Joan Friderici, M.D. performed Ms. C's preliminary examination for Interim Assistance and completed the Division's Form AD-2.¹⁸ Dr. Friderici reported Ms. C's

⁸ All factual findings in this paragraph are based on Exs. 3.50 - 3.56 unless otherwise stated.

⁹ All factual findings in this paragraph are based on Exs. 3.50 - 3.56 unless otherwise stated.

¹⁰ Ex. 3.15.

¹¹ Ex. 3.15.

¹² Ex. 3.67.

¹³ All factual findings in this paragraph are based on Exs. 3.86 - 3.91 unless otherwise stated.

¹⁴ Ex. 3.15.

¹⁵ Ex. 3.15.

¹⁶ Ex. 3.15.

¹⁷ Ex. 3.17.

primary diagnoses as diabetes mellitus and chronic hyperglycemia.¹⁹ Dr. Friderici also reported that Ms. C has a "severe endocrine disorder" which she was unable to manage "due to mental disorder or inadequate treatment", and that she has "no chance of improvement." Dr. Friderici further stated that Ms. C was not expected to recover from these conditions.

On November 1, 2013 Dr. Friderici completed and submitted a revised / updated Form AD-2 (with attachment) on Ms. C's behalf, which detailed her medical problems as follows.²⁰

Insulin dependent diabetes mellitus with neurological complications requiring lifelong daily insulin with inability to manage due to mental disorder and inadequate treatment. Chronic hyperglycemia leading to long-term diabetic complications that disrupt nerve and blood vessel functions, diabetic retinopathy, diabetic neuropathy, peripheral and sensory, depression and anxiety.

Vertebrobasilar insufficiency, significantly decreasing blood flow in the . . . brain that could cause vertigo, blindness, transient ischemic attacks, stroke.

Hypothyroidism to include . . . weight gain, fatigue, depression, having widespread consequences . . . which can lead to coma or even death.

Fuchs' corneal dystrophy resulting in the endothelial cells in the cornea gradually deteriorating and causing swelling, distorting vision, causing pain and severe visual impairment.

Post herpetic neuralgia that are causing severe pain associated with a rash . . . that is extremely sensitive to the touch.

Diminutive / occluded right vertebral artery with nonspecific frontal lobe white matter flair hyperintensities, also causing tingling in extremities and pounding headaches.

Ms. C graduated from high school and attended two years of college.²¹ Since 1997 she has been employed primarily as a cook / chef in restaurants, lodges, and hotels, although she has also worked as a lodge manager and as a waitress.²² She last worked at the No Name Lodge in 2004.²³

Ms. C testified at hearing that she has had diabetes since 2000 and currently has diabetic neuropathy in her hands and feet.²⁴ She stated that she can grip things with her hands, but not very

¹⁸ Exs. 3.27, 3.29. One of the forms (Ex. 3.27) was signed by the doctor's P.A; the other form (Ex. 3.29) was signed by the doctor himself.

¹⁹ All factual findings in the remainder of this paragraph are based on Exs. 3.27 and 3.29 unless otherwise stated.

²⁰ Exs. 3.97, 3.98.

²¹ Ex. 3.91.

²² Ex. 3.89.

²³ J C hearing testimony.

²⁴ All factual findings in this paragraph are based on Ms. C's hearing testimony unless otherwise stated.

well. She testified that she can walk, but not very far. She does not currently have a cane or a walker, but she must use a shopping cart as a makeshift walker when she goes to the store. She also has vision problems such that she will sometimes go temporarily blind. She has had these vision problems for about nine months now, and currently has these vision losses at least once per day. She needs a CAT scan to allow her doctors to determine exactly what is causing her vision problems, but she cannot afford to get the a CAT scan without medical insurance.

B. Relevant Procedural History

Ms. C applied for Interim Assistance on June 27, 2013.²⁵ On October 31, 2013 the Division denied Ms. C’s application based on its finding that her medical condition did not appear to satisfy the Adult Public Assistance program or Social Security Administration’s (SSA’s) disability criteria.²⁶

Ms. C requested a hearing on November 4, 2013.²⁷ The hearing was held on November 21, 2013 and December 5, 2013. Ms. C participated in the hearing by phone, represented herself, and testified on her own behalf. Ms. C's lay advocate, S K, also participated by phone, assisted Ms. C, and testified on her 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].”²⁸ 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.²⁹ Once an applicant is approved for SSI, he or she is then eligible to receive Adult Public Assistance benefits.³⁰

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

²⁵ Ex. 2.

²⁶ Exs. 3.1 - 3.3, Ex. 5.

²⁷ Ex. 6.

²⁸ AS 47.25.430.

²⁹ 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).

³⁰ 7 AAC 40.030(a); 7 AAC 40.170(a).

Supplemental Security Income applications.³¹ In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”³² 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.³³

The SSA uses a five-step evaluation process in making its disability determinations.³⁴ 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.³⁵

The Division uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.³⁶ The first step looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the applicant is not disabled.³⁷ 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.³⁸ In order to be considered disabled, the impairment or combination of impairments must be severe,³⁹ and must be expected to result in death or must have lasted or be expected to last at least 12 months.⁴⁰ 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.

³¹ 7 AAC 40.170(a) and (b); AS 47.25.455.

³² 7 AAC 40.180(b)(1).

³³ 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).

³⁴ 20 C.F.R. § 416.920.

³⁵ 20 C.F.R. § 416.920(a)(4).

³⁶ 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.

³⁷ 20 C.F.R. § 416.920(a)(4)(i).

³⁸ 20 C.F.R. § 416.908.

³⁹ 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).

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

The third step requires the evaluation of whether the impairment satisfies certain impairment-specific criteria (known as "Listings") adopted by the SSA.⁴¹ If it does, the applicant is disabled⁴² 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.⁴³

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 directions proposed by his staff, as the department's chief executive he is never *obliged* to do so.⁴⁴ 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."⁴⁵ Ms. C testified that she is not currently working, and the Division did not dispute this.⁴⁶ Accordingly, Ms. C has proven that she is not engaged in substantial gainful activity, and has satisfied Step 1 of the three-step Interim Assistance analysis.

⁴¹ See 20 C.F.R. Part 404, Subpart P, Appendix 1 (hereafter "Appendix 1").

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

⁴³ See *In Re M.H.*, OAH Case No. 12-0688-APA.

⁴⁴ 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>).

⁴⁵ 20 C.F.R. § 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.

⁴⁶ Ex. 3.1; J C testimony; Jamie Lang testimony.

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."⁴⁷ 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.⁴⁸ The inquiry at Step 2 is "a de minimis screening device to dispose of groundless claims."⁴⁹ 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.⁵⁰ 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.⁵¹ The Division found that Ms. C's diabetes is "severe" as defined by the applicable regulations.⁵² Accordingly, Ms. C'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. C'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").

⁴⁷ 20 C.F.R. § 404.1521.

⁴⁸ *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).

⁴⁹ *Smolen*, 80 F.3d at 1290 (citing *Bowen v. Yuckert*, 482 U.S. 137 (1987)).

⁵⁰ SSR 85-28.

⁵¹ 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 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.

⁵² Ex. 3.2; Jamie Lang hearing testimony.

The Division did not dispute that Ms. C's impairments have lasted for more than 12 months.⁵³ The medical evidence confirms that her impairments satisfy the 12 month durational requirement. Ms. C therefore 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.⁵⁴ 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.⁵⁵

The record indicates that Ms. C has five basic types of impairments. These are (1) insulin dependent diabetes mellitus; (2) hypothyroidism; (3) neuropathy in her hands and feet; (4) vision problems due to diabetic retinopathy, vascular insufficiency / decreased blood flow to the brain, and Fuchs' corneal dystrophy; and (5) headaches due to diminutive / occluded right vertebral artery.⁵⁶ The Social Security Administration has different criteria ("Listings") for each of these impairments. Accordingly, each of the five impairments must be analyzed separately.

a. Ms. C's Diabetes

The Social Security disability system classifies Ms. C's diabetes under the Endocrine System Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 9.08, which requires in relevant part as follows:

- A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or
- B. Acidosis occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO₂ or bicarbonate levels); or

⁵³ Exs. 3.2 - 3.3; Jamie Lang hearing testimony.

⁵⁴ *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).

⁵⁵ *Sullivan, supra*, 493 U.S. at 530.

⁵⁶ Exs. 3.97, 3.98.

C. Retinitis proliferans; evaluate . . . under the criteria in 2.02, 2.03, or 2.04.⁵⁷

With regard to § 9.08(A), Ms. C clearly has neuropathy to some degree. However, there is no evidence in the record indicating that Ms. C's neuropathy causes "significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station." Accordingly, Ms. C does not currently satisfy Listing § 9.08(A).

Next, with regard to § 9.08(B), it is likely that Ms. C's poorly-controlled diabetes results in some degree of acidosis. However, the record does not contain documentation of acidosis occurring at least once every 2 months documented by appropriate blood chemical tests. Accordingly, Ms. C does not currently satisfy Listing § 9.08(B).

Finally, with regard to § 9.08(C), Ms. C's vision is clearly impaired for multiple reasons. However, there is no evidence in the record that Ms. C's visual acuity, after correction, is bad enough to satisfy Listing § 2.02; that her visual field is contracted to the extent required by Listing § 2.03; or that her visual efficiency, after correction, is bad enough to satisfy Listing § 2.04.

In summary, Ms. C's diabetes is clearly poorly controlled. However, the extent of her neuropathy and vision loss is not yet sufficient to satisfy the specific criteria of SSA Listing § 9.08, and the record does not contain lab test results showing acidosis to the extent and with the frequency required by SSA Listing § 9.08. Accordingly, Ms. C cannot currently be found to be disabled on the basis of her diabetes.

b. Ms. C's Hypothyroidism

The Social Security disability system does not currently classify adult hypothyroidism under any particular Listing, but case law indicates it is appropriate to consider hypothyroidism under the endocrine system Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 9.00.⁵⁸ However, Ms. C's

⁵⁷ 2.02 Loss of visual acuity. Remaining vision in the better eye after best correction is 20/200 or less.

2.03 Contraction of the visual field in the better eye, with: A. The widest diameter subtending an angle around the point of fixation no greater than 20 degrees; OR B. A mean deviation of -22 or worse, determined by automated static threshold perimetry as described in 2.00A6a(v); OR C. A visual field efficiency of 20 percent or less as determined by kinetic perimetry (see 2.00A7b).

⁵⁸ 2.04 Loss of visual efficiency. Visual efficiency of the better eye of 20 percent or less after best correction There is no specific SSA Listing for hypothyroidism. See *Braund v. Colvin*, 2014 WL 793340 (W.D. Wis. 2014). However, there are cases which indicate hypothyroidism may appropriately be considered under Listing 9.00 (the endocrine system). See *Smith v. Astrue*, 2008 WL 4853757 (W.D. Pa. 2008); *Collins v. Astrue*, 2008 WL 4279396 (S.D. Texas 2008).

symptoms have already been compared to the endocrine system Listing in the section discussing her diabetes, above, and her symptoms do not satisfy the criteria. Accordingly, Ms. C's hypothyroidism likewise fails to satisfy the specific criteria of SSA Listing Section 9.00. Accordingly, Ms. C cannot be found to be disabled on the basis of her hypothyroidism.

c. Ms. C's Neuropathy

Ms. C's neuropathy was previously discussed above in the context of her diabetes (see discussion at pages 8 - 9, above). However, the Social Security disability system also has a separate classification, for peripheral neuropathy due to any cause, under the "Neurological Disorders" Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 11.14. That Listing requires "disorganization of motor function as described in 11.04(B), in spite of prescribed treatment." Listing § 11.04(B) in turn requires:

- A. Sensory or motor aphasia resulting in ineffective speech or communication; or
- B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).

As discussed above in the context of diabetes-related neuropathy, Ms. C clearly has neuropathy to some degree. However, there is no evidence in the record indicating that Ms. C's neuropathy causes "significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station," or that it causes "ineffective speech or communication." Accordingly, Ms. C does not currently satisfy Listing § 11.14.

d. Ms. C's Vision Problems

Ms. C's vision problems were previously discussed above in the context of her diabetes (see discussion at pages 8 - 9, above). However, the evidence in the record indicates that Ms. C's vision problems have multiple causes in addition to her diabetes, including vascular insufficiency / decreased blood flow to the brain and Fuchs' corneal dystrophy. The Social Security disability system also has a separate classification, for visual impairment due to any cause, under the "Special Senses and Speech" Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, §§ 2.02 - 2.04. Those Listings require as follows:

- 2.02 Loss of visual acuity. Remaining vision in the better eye after best correction is 20/200 or less.
- 2.03 Contraction of the visual field in the better eye, with:

- A. The widest diameter subtending an angle around the point of fixation no greater than 20 degrees; OR
- B. A mean deviation of -22 or worse, determined by automated static threshold perimetry as described in 2.00A6a(v); OR
- C. A visual field efficiency of 20 percent or less as determined by kinetic perimetry (see 2.00A7b).

2.04 Loss of visual efficiency. Visual efficiency of the better eye of 20 percent or less after best correction (see 2.00A7c).

The record clearly indicates that Ms. C has significant vision problems. However, there is no evidence in the record demonstrating that Ms. C's vision problems satisfy the specific requirements of Listing Sections 2.02, 2.03, or 2.04. Accordingly, Ms. C's vision problems do not meet the specific requirements of the SSA's Listings for vision problems, and Ms. C thus cannot be found to be disabled based on her vision problems.

e. Ms. C's Headaches

The Social Security Administration has not yet officially classified headaches under a particular listing.⁵⁹ However, several federal district court cases indicate that SSA Listing Section 11.03 is an appropriate listing under which to analyze headaches. SSA Question and Answer (“Q & A”) document 09–036 is the SSA's current guidance for determining whether headaches are a medically determinable impairment.⁶⁰ According to the SSA, Listing 11.03 is still the most analogous listing for considering medical equivalence of headaches. The Q & A document 09-036 describes the essential components of Listing 11.03, as those components apply to headaches, as a typical headache event pattern that is documented by detailed descriptions, including all associated phenomena (e.g., premonitory symptoms, aura, duration, intensity, treatment), that occurs more frequently than once weekly with alteration of awareness or an effect that significantly interferes with activity during the day (e.g., need for a darkened quiet room, lying down without moving, or sleep disturbance that impacts daytime activities).

Although the record in this case clearly indicates that Ms. C has significant headaches, the medical evidence in the record fails to demonstrate that the severity of Ms. C's symptoms are

⁵⁹ This has been confirmed in several federal district court decisions, including *Miller v. Astrue*, 2011 WL 671752 (D. Ariz. 2011); *Tonsor v. Commissioner of Social Sec.*, 2011 WL 1231602 (C.D. Ill. 2011); *Watts v. Astrue*, 2012 WL 3150369 (C.D. Ill. 2012); and *Romonosky v. Colvin*, 2013 WL 4052921 (W.D. Pa. 2013).

⁶⁰ The SSA document is quoted in *Miller v. Astrue*, 2011 WL 671752 (D. Ariz. 2011).

sufficient to satisfy the criteria of SSA document 09–036. Accordingly, Ms. C cannot currently be found to be disabled on the basis of her headaches.

IV. Conclusion

Ms. C suffers from several severe impairments, and those impairments satisfy the 12 month durational requirement. However, although Ms. C's impairments are significant, they do not satisfy the specific criteria of any SSA "Listing." As an applicant for Interim Assistance, Ms. C has the burden of proving, by a preponderance of the evidence, that she is likely to be found disabled by SSA. The preponderance of the evidence demonstrates that Ms. C does not satisfy step three of the SSA disability determination process (*i.e.* that one or more of her impairments meets or equals an SSA Listing). Accordingly, the Division correctly determined that Ms. C is not currently eligible for Interim Assistance. The Division's decision denying Ms. C's application for Interim Assistance is therefore affirmed.

DATED this 14th 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 25th 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.]