

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

In the Matter of:)
) OAH No. 14-0236-APA
C J. N) DPA Case No.
_____)

FAIR HEARING DECISION

I. Introduction

The issue in this case is whether C N satisfies the Interim Assistance program's disability criteria. The Division of Public Assistance (Division) concluded that although Mr. N's impairments are medically severe, and although his 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 Mr. N's application for Interim Assistance.²

This decision concludes that Mr. N suffers from several severe impairments, and that these impairments satisfy the 12 month durational requirement. However, Mr. N's impairments do not currently satisfy the specific criteria of any of SSA's applicable impairment "Listings." As a result, Mr. N does not satisfy the Interim Assistance program's eligibility requirements.³ The Division's decision denying Mr. N's application for Interim Assistance is therefore affirmed.

II. Facts

A. Mr. N's Medical Condition and Functional Impairments

Mr. N is 45 years old.⁴ He has diagnoses including anxiety disorder, possible Chronic Obstructive Pulmonary Disease (COPD), gastritis, hepatitis C, hypertension, hypothyroidism, spinal disc herniation, degenerative disc disease, and mild scoliosis.⁵

Mr. N suffers from chronic neck pain, back pain, and migraine headaches.⁶ He had a detached retina in his left eye; he had surgery to correct it but his vision is still poor.⁷ He also has mild

¹ Exs 6.0 - 6.3; Jamie Lang hearing testimony.

² Exs. 4, 5.

³ Since the decision in *In re M.H.*, OAH No. 12-0688-APA (Commissioner of Health and Social Services 2012), it is typically more difficult for an applicant to qualify for Alaska's Interim Assistance program than it is for the same applicant to qualify for Supplemental Security Income (SSI) with the SSA, (although the process of qualifying for SSI takes longer). Accordingly, an applicant should not assume he or she will fail to qualify for SSI simply because the applicant fails to qualify for Interim Assistance.

⁴ Ex. 1.

⁵ Exs. 3.6, 3.8, 3.12.

⁶ Ex. 3.5

⁷ Ex. 3.34.

glaucoma in both eyes which also contributes to his poor vision.⁸ He had a thyroid ablation in 2004 and takes synthroid as a replacement.⁹ His doctors believe that he has cirrhosis of the liver due to his hepatitis C.¹⁰ He sometimes has body pains and pain that originates behind his eyes and then travels down through his head to his abdomen and groin; his care providers think this is caused by flare-ups of his hepatitis C.¹¹

Mr. N must sometimes use a cane when going to his doctor appointments, but at other times he can do without it.¹² On January 31, 2013 x-rays were taken of Mr. N's right hip.¹³ The x-rays showed some lucencies in the proximal aspect of the right femur, and some erosion of the tip of the greater trochanter, probably related to a prior surgery, but no acute abnormalities.

Mr. N also had his pelvis x-rayed on January 31, 2012.¹⁴ The x-rays showed some rods placed in the right femur in a prior surgery, but were otherwise normal.

On May 19, 2012 x-rays were taken of Mr. N's cervical spine.¹⁵ The x-rays revealed a small area of ossification in the anterior spinal ligament at the C6-7 level, but were otherwise normal. An MRI of Mr. N's cervical spine was taken on the same date; the MRI showed a small broad disc bulge at C6-7, causing no spinal stenosis; the MRI was otherwise normal.¹⁶

X-rays of Mr. N's thoracic spine were also taken on May 19, 2012; these x-rays showed about five degrees of levoscoliosis, a slight loss of height of the vertebral bodies, and small osteophytes at the vertebral end-plates of T8, T9, and T10, but were otherwise normal.¹⁷

Finally, on May 19, 2012 Mr. N also had x-rays taken of his lumbar spine and sacral spine.¹⁸ The x-rays showed about seven degrees of dextroscoliosis, but spinal alignment and bone density were normal. There was moderate narrowing at the L3-4 disc space, with osteophytes arising from the vertebral end plates. The sacrum and sacroiliac joints appeared normal.

On January 14, 2013 Mr. N reported pain in his ribs and underwent a chest x-ray.¹⁹ The x-rays found mild degenerative changes in the right first costochondral junction, but no evidence of

⁸ Ex. 3.34.

⁹ Ex. 3.34.

¹⁰ Ex. 3.34.

¹¹ Ex. 3.9.

¹² Exs. 3.49, 3.59.

¹³ All factual findings in this paragraph are based on Ex. 3.42 unless otherwise stated.

¹⁴ All factual findings in this paragraph are based on Ex. 3.44 unless otherwise stated.

¹⁵ All factual findings in this paragraph are based on Ex. 3.37 unless otherwise stated.

¹⁶ Ex. 3.40.

¹⁷ Ex. 3.39.

¹⁸ All factual findings in this paragraph are based on Ex. 3.38 unless otherwise stated.

¹⁹ All factual findings in this paragraph are based on Ex. 3.22.

acute rib fractures or complications of rib fractures. The radiology report also stated there was a slight deformity of the fifth and sixth ribs which might be due to old healed fractures.

Mr. N has occasional panic attacks and takes Benzodiazepine, Lorazepam, and Lexapro for what one of his healthcare providers has characterized as "intense social anxiety."²⁰

In October 2013 Mr. N completed the Division's *Disability and Vocational Report* form.²¹ In completing that report, Mr. N wrote that he has the following impairments:

[D]etached retina, anxiety, head injury 2002, hepatitis C, thyroid removal 1984 . . . right leg 2.5 inches shorter than left leg, back and hip injury (broken) . . . cysts on testicle and urethra, swollen prostate affects urination, ankle, hip, and knee problems, had two mild heart attacks.

On November 26, 2013 Dr. Shanda Lohse, M.D. performed Mr. N's preliminary examination for Interim Assistance and completed the Division's Form AD-2.²² Dr. Lohse reported Mr. N's primary diagnoses as hepatitis C, chronic hypothyroidism, hypertension, and anxiety.²³ Dr. Lohse noted that Mr. N was being treated for his anxiety, but stated that Mr. N was not expected to recover from any of the four listed conditions.²⁴

B. Mr. N's Education and Work History

Mr. N completed 11th grade and can speak and write in English.²⁵ He worked as a cashier for the No Name from 2001 - 2002. He performed construction work from 2004 - 2006. He worked as a restaurant dish washer from 2006 - 2010. Finally, he worked as a restaurant kitchen manager in 2009. He was not required to lift more than 20 pounds at any of these jobs.

C. Mr. N's Hearing Testimony

At hearing Mr. N testified in relevant part as follows:

1. He was a "blue baby" at birth.²⁶
2. He was involved in a hit-and-run automobile accident with a drunk driver back in 1984 in which most of the bones in his right leg were shattered.
3. He sustained a head injury in another accident in 2002 and was "knocked-out" for "several months." Since that head injury he sometimes loses track of what he is talking about.
4. He had knee surgery once and back surgery twice.

²⁰ Exs. 3.49, 3.61, 3.68.

²¹ All factual findings in this paragraph are based on Exs. 3.101 - 3.106 unless otherwise stated.

²² Exs. 3.99, 3.100.

²³ Ex. 3.100.

²⁴ Ex. 3.100.

²⁵ All factual findings in this paragraph are based on Exs. 3.103 - 3.105 unless otherwise stated.

²⁶ A "Blue baby" is a baby born with a bluish tinge to the skin because of lack of oxygen in the blood, usually caused by a congenital heart defect. See Collins English Dictionary, accessed online at <http://www.collinsdictionary.com/dictionary/english/blue-baby> (date accessed May 23, 2014).

5. He has a detached retina in one eye and is starting to have vision problems in his other eye.
6. He has rheumatoid arthritis. His right hand swells up.
7. He has relatives who have had brain tumors, and he is worried that he may have one also.
8. "He is not as mobile as he used to be." He uses a walker or a cane to get around. He has fallen numerous times, so he tries not to walk outside in the winter. He thinks he can walk about one city block before it gets painful.
9. He currently lives with his mother. He is not able to help with chores around the house. His older sisters come over occasionally and assist him with his laundry.
10. He has to eat about 15 small meals per day to avoid headaches and stomach problems.
11. His daily routine is to get up, use the bathroom, take his medication, eat a light meal, and watch television. He goes to the doctor about once per month.
12. He goes to the food bank in No Name once per month on Thursdays. He and his mother go together. One of his sisters usually drives them.
13. He is able to set-up his own med-sets and take his medications by himself.
14. He has problems controlling his left hand. He cannot clean himself after toileting.
15. He previously worked as a chef and he can still cook.
16. He has not used alcohol for seven or eight years, and was recently able to quit smoking.

D. Relevant Procedural History

Mr. N applied for Interim Assistance on October 18, 2013.²⁷ On January 21, 2014 the Division denied Mr. N's application based on its finding that his medical condition did not appear to satisfy the Interim Assistance program's disability criteria.²⁸

Mr. N requested a hearing on January 30, 2014.²⁹ The hearing was held on March 17, 2014. Mr. N participated in the hearing by phone, represented himself, and testified on his 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. After the hearing the record was left open for post-hearing filings through May 2, 2014, at which time the record closed.

²⁷ Ex. 2. Mr. N applied to the Social Security Administration (SSA) for Supplemental Security Income (SSI) on the same date (October 18, 2013) (Ex. 3.98).

²⁸ Exs. 4, 5.

²⁹ Ex. 5.1.

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].”³⁰ 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.³¹ Once an applicant is approved for SSI, he or she is then eligible to receive Adult Public Assistance benefits.³²

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.³³ In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”³⁴ 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.³⁵

The SSA uses a five-step evaluation process in making its disability determinations.³⁶ 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.³⁷

The Division uses *the first three steps* of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.³⁸ The first step looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the applicant is not disabled.³⁹ If the applicant is not performing “substantial gainful activity,” it is necessary to proceed to step two.

³⁰ AS 47.25.430.

³¹ 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).

³² 7 AAC 40.030(a); 7 AAC 40.170(a).

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

³⁴ 7 AAC 40.180(b)(1).

³⁵ 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).

³⁶ 20 C.F.R. § 416.920.

³⁷ 20 C.F.R. § 416.920(a)(4).

³⁸ 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.

³⁹ 20 C.F.R. § 416.920(a)(4)(i).

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.⁴⁰ In order to be considered disabled, the impairment or combination of impairments must be severe,⁴¹ and must be expected to result in death or must have lasted or be expected to last at least 12 months.⁴² 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.⁴³ If it does, the applicant is disabled⁴⁴ 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.⁴⁵

B. 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."⁴⁶ Mr. N testified that he is not currently working, and the Division did not dispute this.⁴⁷ Accordingly, Mr. N has proven that he is not 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."⁴⁸ An impairment should be found to be "non-severe" only when the evidence establishes a "slight abnormality" that has "no more than a minimal

⁴⁰ 20 C.F.R. § 416.908.

⁴¹ 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).

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

⁴³ See 20 C.F.R. Part 404, Subpart P, Appendix 1 (hereafter "Appendix 1").

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

⁴⁵ See *In Re M.H.*, OAH Case No. 12-0688-APA. This is the point at which the analysis in Alaska Interim Assistance program cases diverges from the analysis which SSA uses in SSI cases. In SSI cases, even if an applicant's impairment *does not* meet the criteria of a specific Listing at step three, the applicant can still qualify for benefits by showing that he or she cannot perform his or her prior work, and cannot perform sedentary work. See 20 C.F.R. § 416.920.

⁴⁶ 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.

⁴⁷ Ex. 6.2; C N hearing testimony; Jamie Lang hearing testimony.

⁴⁸ 20 C.F.R. § 404.1521.

effect” on an individual's ability to work.⁴⁹ The inquiry at Step 2 is “a de minimis screening device to dispose of groundless claims.”⁵⁰ 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.⁵¹ 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.⁵² The Division found that Mr. N's impairments are "severe" as defined by the applicable regulations.⁵³ Accordingly, Mr. N's 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 Mr. N'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 Mr. N's impairments have lasted for more than 12 months.⁵⁴ The medical evidence confirms that his impairments satisfy the 12 month durational requirement. Mr. N 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

⁴⁹ *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).

⁵⁰ *Smolen*, 80 F.3d at 1290 (citing *Bowen v. Yuckert*, 482 U.S. 137 (1987)).

⁵¹ SSR 85-28.

⁵² 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.

⁵³ Ex. 6.2; Jamie Lang hearing testimony.

⁵⁴ Ex. 6.2; Jamie Lang hearing testimony.

the requirements of a "Listings" impairment.⁵⁵ 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.⁵⁶

The record indicates that Mr. N has eight basic types of impairments. These are (1) back and neck pain caused by spinal problems; (2) hip and knee pain (joint pain); (3) hepatitis C; (4) hypertension; (5) hypothyroidism; (6) vision problems; (7) migraine headaches; and (8) anxiety.⁵⁷ The Social Security Administration has different criteria ("Listings") for each of these impairments. Accordingly, each of the eight impairments must be analyzed separately.

a. Mr. N's Spinal Problems / Back and Neck Pain

The Social Security disability system classifies Mr. N's spinal problems and attendant neck and back pain 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:⁵⁸

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.

With regard to Section 1.04A, the evidence in the record indicates that Mr. N's spinal problems satisfy one of the criteria in this section because he has some limitation of motion in his

⁵⁵ *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).

⁵⁶ *Sullivan, supra*, 493 U.S. at 530.

⁵⁷ See Section II above at pages 1 - 3.

⁵⁸ Appendix 1, §1.04.

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, there is no evidence of lumbar spinal stenosis. Further, although Mr. N's ability to walk is clearly impaired, under the SSA's regulations, the "inability to ambulate effectively" has very specific criteria, and is defined in relevant part as:⁵⁹

(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 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

Mr. N's testimony regarding his difficulty walking was credible. However, both Mr. N's testimony and the medical records indicate that he sometimes walks using one cane, and can sometimes walk without a cane; he does not need a walker, two crutches, or two canes. Accordingly, Mr. N does not satisfy the criteria of Listing Section 1.04(C).

In summary, Mr. N's spinal problems, while significant, do not satisfy the specific criteria of SSA Listing Section 1.04. It is therefore necessary to determine whether one of his other impairments satisfies the requirements of the relevant SSA Listing.

b. Mr. N's Hip and Knee Problems / Joint Pain

The Social Security disability system classifies Mr. N's shoulder, hip, and knee joint pain 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

⁵⁹ Appendix 1, §1.00(B)(2)(b).

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).

Mr. N could be found to be disabled by his lower extremity joint pain, under Section 1.02(A), above, if he were unable to ambulate effectively as defined by Listing Section 1.00(B)(2)(b). However, as discussed in the preceding subsection, Mr. N is able to walk with a cane, and thus fails to meet the stringent requirements of Listing Section 1.00(B)(2)(b).⁶⁰ Accordingly, Mr. N's lower extremity joint pain does not satisfy the "inability to ambulate" requirement of Listing 1.02(A).

Mr. N could be found to be disabled by his *upper extremity joint pain* under Section 1.02(B), above, if he had a bad joint in *each arm*, and were he unable to perform fine and gross movements effectively. Here, although Mr. N is clearly impaired by his upper extremity joint pain, there is no evidence indicating that he has one or more bad joints in *each arm*.

In summary, Mr. N's joint problems do not satisfy the specific criteria of SSA Listing Section 1.02. It is therefore necessary to determine whether any of his other impairments satisfy the requirements of the relevant SSA Listing.

c. Mr. N's Hepatitis C

Mr. N's Hepatitis C is analyzed under "Category of Impairments, Digestive System" (20 CFR Part 404, Subpart P, Appendix 1, Section 5.05). *See* Section 5.0(D)(4)(a)(ii) ii ("We evaluate all types of chronic viral Hepatitis infections under 5.05 or any listing in an affected body system(s).")

The criteria of Section 5.05 are extremely technical.⁶¹ The Division's Medical Reviewer testified that the severity of the Mr. N's Hepatitis C did not meet the requirements of Section 5.05.

⁶⁰ See discussion in Section III(C)(3)(a), above.

⁶¹ In order for the Mr. N to meet the criteria set out in Section 5.05, there must be evidence of:

A. Hemorrhaging from esophageal, gastric, or ectopic varices or from portal hypertensive gastropathy, demonstrated by endoscopy, x-ray, or other appropriate medically acceptable imaging, resulting in hemodynamic instability as defined in 5.00D5, and requiring hospitalization for transfusion of at least 2 units of blood. Consider under a disability for 1 year following the last documented transfusion; thereafter, evaluate the residual impairment(s). OR

B. Ascites or hydrothorax not attributable to other causes, despite continuing treatment as prescribed, present on at least two evaluations at least 60 days apart within a consecutive 6-month period. Each evaluation must be documented by: (1) Paracentesis or thoracentesis; or (2) Appropriate medically acceptable imaging or physical examination and one of the following: (a) Serum albumin of 3.0 g/dL or less; or (b) International Normalized Ratio (INR) of at least 1.5. OR

An independent review of Mr. N's medical records confirms that the specific requirements of Listing 5.05 are not met here. It is therefore necessary to determine whether any of his other impairments satisfy the requirements of the relevant SSA Listing.

d. Mr. N's Hypertension

The SSA Listing which applies to Mr. N's hypertension is Section 4.00 (Cardiovascular System), and specifically subsection 4.00(H)(1). That Listing states in relevant part that, "[b]ecause hypertension (high blood pressure) generally causes disability through its effects on other body systems, we will evaluate it by reference to the specific body system(s) affected (heart, brain, kidneys, or eyes) when we consider its effects under the listings." In this case there has been no assertion that Mr. N's hypertension has had a debilitating effect on any specific organs or systems. Independent review of Mr. N's medical records likewise fails to disclose a connection between Mr. N's hypertension and any specific debilitating effect. Accordingly, Mr. N's hypertension does not satisfy the requirements of Listing 4.00(H)(1). It is therefore necessary to determine whether any of his other impairments satisfy the requirements of the relevant SSA Listing.

e. Mr. N's Hypothyroidism

C. Spontaneous bacterial peritonitis with peritoneal fluid containing an absolute neutrophil count of at least 250 cells/mm³. OR

D. Hepatorenal syndrome as described in 5.00D8, with one of the following: (1) Serum creatinine elevation of at least 2 mg/dL; or (2) Oliguria with 24-hour urine output less than 500 mL; or (3) Sodium retention with urine sodium less than 10 mEq per liter. OR

E. Hepatopulmonary syndrome as described in 5.00D9, with: (1) Arterial oxygenation (P_aO₂) on room air of: (a) 60 mm Hg or less, at test sites less than 3000 feet above sea level, or (b) 55 mm Hg or less, at test sites from 3000 to 6000 feet, or (c) 50 mm Hg or less, at test sites above 6000 feet; or (2) Documentation of intrapulmonary arteriovenous shunting by contrast-enhanced echocardiography or macroaggregated albumin lung perfusion scan. OR

F. Hepatic encephalopathy as described in 5.00D10, with 1 and either 2 or 3:

1. Documentation of abnormal behavior, cognitive dysfunction, changes in mental status, or altered state of consciousness (for example, confusion, delirium, stupor, or coma), present on at least two evaluations at least 60 days apart within a consecutive 6-month period; and

2. History of transjugular intrahepatic portosystemic shunt (TIPS) or any surgical portosystemic shunt; or

3. One of the following occurring on at least two evaluations at least 60 days apart within the same consecutive 6-month period as in F1: (a) Asterixis or other fluctuating physical neurological abnormalities; or (b) Electroencephalogram (EEG) demonstrating triphasic slow wave activity; or (c) Serum albumin of 3.0 g/dL or less; or (d) International Normalized Ratio (INR) of 1.5 or greater. OR

G. End stage liver disease with SSA CLD scores of 22 or greater calculated as described in 5.00D11. Consider under a disability from at least the date of the first score.

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, § 9.00.⁶² The Listings under Section 9.00 related to thyroid problems have the following requirements:

9.02 Thyroid Disorders.

Evaluate the resulting impairment under the criteria for the affected body system.

9.03 Hyperparathyroidism. With:

- A. Generalized decalcification of bone on appropriate medically acceptable imaging study and elevation of plasma calcium to 11 mg. per deciliter (100 ml.) or greater; or
- B. A resulting impairment. Evaluate according to the criteria in the affected body system.

9.04 Hypoparathyroidism. With:

- A. Severe recurrent tetany; or
- B. Recurrent generalized convulsions; or
- C. Lenticular cataracts. Evaluate under the criteria in 2.00ff.

There is no evidence in the record to meet the criteria of Listings 9.02, 9.03, or 9.04. Accordingly, Mr. N cannot be found to be disabled based on his hypothyroidism. It is therefore necessary to determine whether any of his other impairments satisfy the requirements of the relevant SSA Listing.

f. Mr. N's Vision Problems

The Social Security disability system classifies Mr. N's vision problems 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

⁶² See *Braund v. Colvin*, 2014 WL 793340 (W.D. Wis. 2014) (no specific SSA Listing for hypothyroidism); *Smith v. Astrue*, 2008 WL 4853757 (W.D. Pa. 2008) (hypothyroidism may appropriately be considered under Listing 9.00 (the endocrine system)); *Collins v. Astrue*, 2008 WL 4279396 (S.D. Texas 2008) (same).

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).

It is possible that Mr. N's vision is bad enough to meet the above criteria. However, in order to prove that his vision problems meet the criteria for this Listing, Mr. N needs exam or vision test results from an ophthalmologist demonstrating that his vision problems satisfy the specific requirements of Listing Sections 2.02, 2.03, or 2.04. That evidence is not present in the record in this case. Accordingly, Mr. N cannot currently be found to be disabled based on his vision problems. It is therefore necessary to determine whether any of his other impairments satisfy the requirements of the relevant SSA Listing.

g. Mr. N's Headaches

The Social Security Administration has not yet officially classified headaches under a particular listing.⁶³ 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.⁶⁴ 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 indicates that Mr. N has significant headaches, the medical evidence in the record fails to demonstrate that the severity of Mr. N's symptoms are sufficient to satisfy the criteria of SSA document 09–036. Accordingly, Mr. N cannot currently be found to be disabled on the basis of his headaches. It is therefore necessary to determine whether any of his other impairments satisfy the criteria of the relevant SSA Listing.

⁶³ 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).

⁶⁴ The SSA document is quoted in *Miller v. Astrue*, 2011 WL 671752 (D. Ariz. 2011).

h. Mr. N's Anxiety Disorder

SSA classifies anxiety disorder under its Listing 12.06 (anxiety-related disorders). In order to meet or equal the criteria of listing 12.06, Mr. N must satisfy the following test:

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

- a. Motor tension; or
- b. Autonomic hyperactivity; or
- c. Apprehensive expectation; or
- d. Vigilance and scanning;

OR

- 2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
- 3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
- 4. Recurrent obsessions or compulsions which are a source of marked distress; or
- 5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration.

OR

C. Resulting in complete inability to function independently outside the area of one's home.^[65]

The record lacks evidence demonstrating that Mr. N satisfies any of the "A" criteria. With regard to the "B" criteria, Mr. N's testimony indicates that his anxiety causes him difficulty in maintaining social functioning and in maintaining concentration. With regard to the "C" criteria, there is no evidence that Mr. N cannot function outside of his home. Consequently, there is insufficient evidence in the record to prove that Mr. N's anxiety satisfies the specific criteria of SSA Listing 12.06.

IV. Conclusion

Mr. N suffers from a number of significant impairments, and those impairments satisfy the 12 month durational requirement. However, Mr. N has not presented evidence demonstrating that any of his impairments satisfy the specific criteria of any SSA "Listing." Accordingly, the Division correctly determined that Mr. N is not currently eligible for Interim Assistance. The Division's decision denying Mr. N's application for Interim Assistance is therefore affirmed.

DATED this 27th day of May, 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 5th day of June, 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.]

⁶⁵ 20 C.F.R. Pt. 404, Subpart P, Appendix 1, § 12.06.