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

In the Matter of	)	
	)	
K J	)	OAH No. 14-0377-APA
	)	Agency No.

#### **DECISION**

### I. Introduction

K J applied for Interim Assistance Benefits. The Division of Public Assistance (division) denied his application. Mr. J appealed that denial.

A hearing was held on March 28, 2014. Mr. J appeared by telephone and represented himself. The division was represented by its lay advocate, Terri Gagne.

#### II. Facts

Mr. J' primary impairment is from a broken femur from a 1986 automobile accident. He had severe injuries and was in the hospital for at least six months. In addition to other injuries, Mr. J had a steel rod placed in his leg from hip to knee. In 2001, Mr. J broke the same femur a second time. His leg was repaired using a titanium plate from hip to knee.

Before his injury, Mr. J worked in his family's no name business. This work involved outdoor physical labor of various types. Mr. J currently has no training in non-physical work. With effort, Mr. J is able to shop, get dressed, and otherwise care for himself. He is not able to stand for more than about ten minutes at a time. He is limited to lifting no more than 15 pounds, and can only walk 100 to 200 feet at a time. It is also difficult for Mr. J to sit in a chair for an extended period of time.

Mr. J had previously qualified for SSI based on his leg injury, but lost that benefit when he was incarcerated. He has now been released from prison, and has re-applied for SSI. With one exception, Mr. J has not worked since his 1986 injury. While in prison, he did work in the prison law library helping other inmates access the legal research databases.

# III. Discussion

Interim Assistance is a benefit available to individuals while they are waiting for the Social Security Administration (SSA) to approve their application for Supplemental

Unless otherwise indicated, the factual findings are based on Mr. J' testimony.

Security Income (SSI).<sup>2</sup> Among other requirements, to receive Interim Assistance an applicant must be "likely to be found disabled by the Social Security Administration." Mr. J has the burden of proving that he is likely to be found disabled by the SSA.<sup>4</sup>

After the hearing, Mr. J submitted additional medical records from 2007.<sup>5</sup> These records include x-ray results and discuss his chronic leg pain and low back pain. Mr. J testified that this report was from the doctor SSA sent him to previously, and that this report formed the basis for SSA's original finding of disability.<sup>6</sup>

Also after the hearing was concluded, Ms. Gagne was notified by Mr. J that he has received an SSI benefit check deposited to his bank account. Ms. Gagne wrote: "Based on [Mr. J'] call and statement, I reviewed Social Security records and was able to confirm the approval for Supplemental Security Income (SSI)."

The issue for this hearing was whether Mr. J was "likely" to be approved for SSI. He was approved, which is strong evidence that he was likely to be approved prior to the SSA approval. Based on this approval, and on the additional medical records submitted by Mr. J, he was likely to have been found disabled by SSA, and he therefore qualified for IA benefits.<sup>8</sup>

## IV. Conclusion

The question in this case was whether the Social Security Administration would find that Mr. J was disabled. The Social Security Administration has found him to be disabled. That finding, along with the additional medical records submitted, is sufficient for Mr. J to meet his burden of proof. He is likely to be found disabled, and therefore qualifies for Interim Assistance.

Dated this 8<sup>th</sup> day of April, 2014.

Signed

Jeffrey A. Friedman

Administrative Law Judge

OAH No. 14-0377-APA

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<sup>7</sup> AAC 40.170(b); 7 AAC 40.375.

<sup>&</sup>lt;sup>3</sup> 7 AAC 40.180(b)(1).

<sup>&</sup>lt;sup>4</sup> 2 AAC 64.290(e).

Facsimile received from Mr. J on March 28, 2014.

<sup>&</sup>lt;sup>6</sup> Testimony of Mr. J

Letter from Ms. Gagne dated April 3, 2014.

This finding does not necessarily mean that Mr. J will receive a check for IA benefits. The application for IA includes an agreement for reimbursing the state for some or all of the benefits received. That reimbursement is made by SSA deducting the same amount from any retroactive SSI benefit payment. Exhibit 2.35. The division will need to determine whether and how this provision applies to Mr. J' situation. Mr. J would have the right to contest any adverse decision made by the division regarding reimbursement.

# **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 22<sup>nd</sup> day of April, 2014.

By: <u>Signed</u>

Name: Jeffrey A. Friedman Title: Administrative Law Judge

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