

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

In the Matter of:)
)
) OAH No. 14-1115-APA
) DPA No.
)

DECISION

I. Introduction

The Division of Public Assistance denied B Q's application for Interim Assistance benefits. Ms. Q requested a hearing and the matter was referred to the Office of Administrative Hearings.

The administrative law judge conducted a telephonic hearing on July 28, 2014. Ms. Q represented herself, and Jeff Miller represented the Division. Ms. Q and Jamie Lang, a disability adjudicator employed by the Division, provided testimony.

Ms. Q has several musculoskeletal conditions, affecting her right wrist and hand, left knee, and lower back, and peripheral neuropathy. In addition, she is obese. The Division's medical reviewer concluded that Ms. Q's impairments do not meet any of the Social Security Administration's disability listings.

Considering the factors applicable to the determination whether she meets the disability listings for purposes of eligibility for Interim Assistance, Ms. Q has not established that she is likely to be found disabled by the Social Security Administration. Therefore, the Division's decision to deny her application is sustained.

II. Facts

B Q graduated from high school and has two years of post-secondary education.¹ She worked as a home health care aide from 2001 until 2013.² About the time she started that job, in 2001, she fractured her right radial head (a bone just below the elbow) and injured her right wrist when she tripped and fell on a broken sidewalk in Alaska.³ The fall resulted in ulnar nerve

¹ Ex. 3.39.

² Ex. 3.37.

³ Supp. Ex., p. 9 (S. Croft, 7/30/14). *See*

www.nlm.nih.gov/medlineplus/ency/patientinstructions/000561.htm (accessed August 22, 2104) ("The radius bone goes from your elbow to your wrist. The radial head is the top of the radial bone, just below your elbow...The most common cause of a radial head fracture is breaking a fall with an outstretched arm.")

neuropathy.⁴ She had a further injury to her right hand in 2008 or 2009, when she was in a motor vehicle accident and fractured her scaphoid (a small bone in the carpus of the wrist).⁵ These combined wrist injuries have greatly reduced the function of her right hand: her fourth and fifth fingers cannot grip.⁶ Her right hand function was further reduced in December, 2012 when while at work she jammed her right little finger and was left with a residual flexion contracture of finger joint (the proximal interphalangeal joint).⁷ Ms. Q injured her finger shortly after she incurred two other injuries, an on the job injury to her left knee in June 2012, and another motor vehicle accident in October, 2012 in which she injured her left knee and lower back.⁸ Ms. Q aggravated the injury to her lower back when exiting a car in November, 2012.⁹ In addition to these injuries, Ms. Q has been diagnosed by her primary care provider with diabetes and hypertension and she has a history of sleep apnea.¹⁰ She is about 5' 6" tall, weighs about 300 pounds, has a body mass index of 44, and has been diagnosed with obesity.¹¹

As a result of the cumulative effects of these injuries and her pre-existing conditions (e.g., obesity), Ms. Q is no longer able to work in her prior capacity as a home health care aide. She is able to walk without using a cane or other assistive device, but due to pain and weakness in her left knee and leg she is unable to remain on her feet unassisted for more than six or seven minutes at a time. She is not able to traverse rough terrain without an assistive device.

Ms. Q applied for Interim Assistance benefits on April 3, 2014.¹² She identified her left knee, back, and right hand as interfering with her work or routine daily activities.¹³ Speaking to an interviewer, she identified her back as the primary problem.¹⁴ On June 6, Dr. S T submitted a physician's report in support of the application.¹⁵ Dr. T's report notes diagnoses of severe L5

⁴ Supp. Ex., pp. 6, 7 (Dr. T, 7/29/14); Ex. 3.9 (Dr. T, 12/11/12).

⁵ Supp. Ex., p. 5 (Dr. T, 7/29/14); Ex. 3.9, 3.12. See Taber's Cyclopedic Medical Dictionary at 324, 1755 (17th ed. 1993) (hereinafter, "Taber's").

⁶ See Supp. Ex., p. 7 (Dr. T, 7/29/14) (right ulnar neuropathy "[e]ffectively limits the use of her right hand to the first three fingers.").

⁷ Ex. 3.8-3.9, 3.14, 3.28-3.29. See Taber's at 443, 739, 1006, 1487.

⁸ Ex. 3.9, 3.19, 3.22, 3.25.

⁹ See Supp. Ex., p. 6 (Dr. T, 7/29/14).

¹⁰ See Supp. Ex., p. 10; Ex. 3.19. Ms. Q's primary care provider is No Name Medical Center. See Ex. 3.36. However, no medical records from the No Name Medical Center have been submitted.

¹¹ See Supp. Ex., pp. 5,6; Ex. 3.9

¹² Ex. 2.

¹³ Ex. 3.35.

¹⁴ Ex. 3.40.

¹⁵ Ex. 3.32-3.33. See 7 AAC 40.180(a).

disc disease with spinal stenosis and bilateral multilevel nerve impingement, a torn medial meniscus of the left knee, and a flexion contracture of the right fifth finger.¹⁶

III. Discussion

Alaska Public Assistance benefits are payable to eligible needy aged, blind and disabled persons pursuant to AS 47.25.430-.615. Applicants who are under age 65 are required to apply and qualify for federal Supplemental Security Income (SSI) benefits.¹⁷ Interim Assistance benefits are paid monthly to eligible Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve their SSI application.¹⁸

An applicant qualifies for Interim Assistance benefits if the Division determines the applicant to be disabled under 7 AAC 40.180.¹⁹ The applicant must submit to an examination by a physician²⁰ (in this case, Dr. T) and the Division's determination as to whether the applicant is disabled is based on:

- (1) a medical review by the department as to whether the applicant is likely to be found disabled by the Social Security Administration, including whether the applicant's impairment meets... (B) Social Security Administration disability criteria for the listings of impairments....;
- (2) medical evidence provided by the applicant or obtained by the department;
- (3) other evidence provided by the applicant...; and
- (4) a review of the written results of the... physician's examination...^[21]

For purposes of its review as to whether the applicant's impairment meets the Social Security Administration's disability criteria, the Division has adopted by reference the Social Security Administration's listing of impairments, set forth at 20 C.F.R. §404, Subpart P, appendix 1, as in effect on September 1, 2013.²² In determining whether the applicant's disability meets the Social Security Administration's disability criteria, the Division considers whether the:

- (1) ...applicant's condition is listed as an impairment category....;

¹⁶ Ex. 3.33.

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

¹⁸ 7 AAC 40.170(a), (b); AS 47.25.455.

¹⁹ 7 AAC 40.170(b). 7 AAC 40.180 in its current form was adopted in 2006, after an internal policy to similar effect was found to have been adopted in violation of the Administrative Procedures Act. *See State, Department of Health and Social Services v. Okuley*, 214 P.3d 247, 250 note 6 (Alaska 2009).

²⁰ 7 AAC 40.180(a).

²¹ 7 AAC 40.180(b)(1)(B), (2), (3), (4).

²² 7 AAC 40.180(b)(1)(B). Specific listings are referred to in the text as "Section ##."

- (2) medical information...documents the applicant's impairment;
- (3) impairment affects the applicant's activities of daily living;
- (4) ...applicant can perform any other work, including sedentary work; and
- (5) ...applicant's impairment has lasted or is expected to last for a continuous period of not less than 12 months.^[23]

While the Division has by regulation adopted the Social Security Administration's disability criteria, it has not by regulation adopted the full five step evaluation process utilized by the Social Security Administration to determine whether an applicant is disabled.²⁴ However, the Division has, by administrative adjudication, adopted the first three steps of that process.²⁵ At Step 1, the Social Security Administration considers whether the person is performing substantial gainful activity.²⁶ At Step 2, the Social Security Administration considers whether the impairment has lasted, or is expected to last, for at least 12 months.²⁷ At Step 3, the Social Security Administration considers whether the person meets or equals the disability listings.²⁸ If a person meets these first three steps of the Social Security Administration's process the Division will consider that person "likely" to be found disabled by the Social Security Administration, for purposes of

²³ 7 AAC 40.180(c)(1)-(5).

²⁴ The Social Security Administration's procedures for making a disability determination, which are established in 20 C.F.R. §416.920 (SSI [Title XVI]) and 20 C.F.R. §404.1520 (Federal Old Age, Survivors, and Disability Insurance [Title II]).

²⁵ In Re M.H., OAH No. 12-0688-APA (Commissioner of Health and Social Services 2012), *reversed*, (Alaska Superior Court No. 12-00000 CI), *Petition for Review pending* (Alaska Supreme Court No. S-15339) (hereinafter, In Re M.H.). In that case, the commissioner overruled prior decisions adopting the full five part process. See OHA No. 11-FH-134 (2011); OHA No. 11-FH-188 (2011), at 18. See also In Re D.L.X., OAH No. 12-0591-APA (Commissioner of Health and Social Services 2012).

Because In Re M.H. is currently on appeal, the superior court decision reversing the commissioner's decision is not a final decision entitled to recognition under the doctrine of collateral estoppel. See generally, State v. United Cook Inlet Drift Association, Inc., 895 P.2d 947 (Alaska 1995). The superior court decision has been deemed "persuasive authority" in some subsequent administrative decisions, and the full five step process has been applied in those decisions. See, e.g., In Re S.X., at 5, OAH No. 14-0010-CMB (Commissioner of Health and Social Services 2014); In Re C.J., at 4, OAH No. 13-1509-APA (Commissioner of Health and Social Services 2014). However, in other administrative decisions the superior court decision has been disregarded as unpersuasive. See In Re N.J., at 4, note 23, OAH No. 13-1803-APA (Commissioner of Health and Social Services 2014) (superior court decision "does not appear to be consistent with the department's regulations"); In Re L.Q., at 12, OAH No. 13-1453-APA (Commissioner of Health and Social Services 2014) ("[I]t is neither necessary nor appropriate to incorporate...all of the procedural and substantive rules applicable to Steps [sic] and Step 5"). In Re K.O., at 3, OAH No. 13-0979-APA (Commissioner of Health and Social Services 2014). In this case, for the reasons stated in the latter two cases, the administrative law judge declines to adopt the superior court's reasoning and will not apply the five part test. See In Re M.H., at 2 ("The intent of [7 AAC 40.180] is to allow the Department to make a fast and relatively inexpensive prediction of whether an applicant will ultimately be found to be disabled by the SSA.").

²⁶ 20 C.F.R. §416.920(a)(4)(i).

²⁷ 20 C.F.R. §416.920(a)(4)(ii). See 20 C.F.R. §416.909.

²⁸ 20 C.F.R. §416.920(a)(4)(iii).

eligibility for Interim Assistance benefits.²⁹ In this case, the Division concedes that Ms. Q meets Step 1 and Step 2 of the Social Security Administration’s process, and the only issue is whether she meets Step 3.

A. Applicable Disability Criteria

Ms. Q’s application and her physician’s supporting report identify medical conditions affecting her left knee, back, and right hand.³⁰ The conditions identified by Dr. T and addressed in the medical records include both musculo-skeletal impairments (Section 1.00) and a neurological impairment (Section 11.00). The specific listings that apply to those conditions are major joint dysfunction (Section 1.02), disorder of the spine (Section 1.04), and peripheral neuropathy (Section 11.14).³¹ In considering whether her musculoskeletal conditions are disabling, any additional and cumulative effects of her obesity must be considered.³²

1. *Major Joint Dysfunction (Section 1.02)*

A major joint (*e.g.*, wrist/hand or knee)³³ dysfunction is characterized by a gross anatomical deformity (*e.g.*, subluxation, contracture, bony or fibrous ankylosis, or instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint, and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction or ankylosis of the affected joint.³⁴ Ms. Q has a contracture of the right finger and instability in the knee.³⁵ An x-ray of her right hand shows “minor degenerative changes first carpal-metacarpal articulation.”³⁶ Dr. T reported that a July, 2012 MRI of her left knee shows a torn meniscus.³⁷ Ms. Q reported that a 2012 MRI of her left knee showed damage of an indeterminate age.³⁸ The medical documentation in the record does not show joint space narrowing, bony destruction or ankylosis in the right hand/wrist or in the left knee.

²⁹ In Re M.H.

³⁰ Ex. 3.8.

³¹ 20 C.F.R. §404, Subpart P, Appendix 1 (2013).

³² Section 1.00Q (Musculoskeletal System).

³³ *See* Sec. 1.00(F).

³⁴ Sec. 1.02.

³⁵ *See* Ex. 3.19 (“Her knee constantly buckles on her”) (Dr. T, 6/4/2014).

³⁶ Ex. 3.12.

³⁷ Supp. Ex., pp. 2, 3 (Dr. T, 7/30/2014).

³⁸ *See* Ex. 3.19

Assuming that the medical documentation is sufficient, to meet the disability criteria for this listing the applicant must have an impairment of both upper extremities, or be unable to ambulate effectively.³⁹ Ms. Q has an impairment of only one of her upper extremities, and thus she does not meet the first criterion. Thus, to meet this listing, she must be unable to ambulate effectively.

The inability to ambulate effectively is defined in Section 1.00(A)(2)(b) as follows:

(1) 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...to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

...

(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. They must have the ability to travel without companion assistance to and from a place of employment or school. 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, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail.

Ms. Q does not use a walker or a cane to get around. Because she is able to independently ambulate without a hand-held assistive device, she does not meet the general definition of ineffective ambulation. However, to be considered able to ambulate effectively a person must be capable of “sustaining a reasonable walking pace over a sufficient distance to carry out activities of daily living.”⁴⁰ In common experience, obesity presents an additional and cumulative limitation on the ability of a person with an unstable knee to effectively ambulate.

Dr. T reported that when examined, Ms. Q could “hardly walk.”⁴¹ Ms. Q reported that she can stand for only short periods of time, that her “knee constantly buckles on her[,]” and that she “can only walk about 10 steps before she is in extreme pain.”⁴² She reported that she can

³⁹ Section 1.02(A), (B).

⁴⁰ §1.00(A)(2)(b)(2).

⁴¹ Supp. Ex., p. 7 (Dr. T, 7/29/14).

⁴² Supp. Ex., p. 6 (Dr. T, 7/29/14); Ex. 3.19 (“She states when she stands for a period of time, her knee will swell. She cannot even cook dinner without have to sit 5-6 times [be]cause of the pain.”) (Dr. T, 6/4/2014).

climb up or down stairs, but only with “shooting pain.”⁴³ Ms. Q testified that she does not walk outside the home, for fear of falling. She added that she is able to walk to her car and drive to the store, where she is able to shop while leaning on a shopping cart.⁴⁴ Also, she testified that she is able to walk unassisted for six or seven minutes.

The evidence regarding Ms. Q’s ability to ambulate effectively is mixed. Based on Dr. T’s observation and Ms. Q’s report to him, one might conclude that she is unable to ambulate effectively. However, she does not use an assistive device and she can (with pain) climb up and down some stairs; she can walk from her home to her car and from the car to the store, and to shop without using an electric cart, and she testified that she is able to walk unassisted for six or seven minutes. These capabilities are not indicative of an inability to ambulate effectively.⁴⁵ Ms. Q has not established, by the preponderance of the evidence, that she is unable to ambulate effectively.

2. *Disorder of the Spine (Section 1.04)*

Disorders of the spine include spinal stenosis.⁴⁶ Lumbar spinal stenosis is a condition that meets the listing for a disorder of the spine, if it results “in pseudoclaudication, established by findings on appropriate medical imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively.”⁴⁷ Pseudoclaudication “may result from lumbar spinal stenosis, is manifested as pain and weakness, and may impair ambulation.”⁴⁸ The medical documentation establishes that Ms. Q has lumbar spinal stenosis, pain and weakness in her legs, and impairment of ambulation. However, because Ms. Q has not established that she is unable to ambulate effectively, she has not shown that she meets the listing for a disorder of the spine.

2. *Peripheral Neuropathy (Section 11.14)*

A peripheral neuropathy meets the listing if it results in disorganization of motor function, in spite of prescribed treatment.⁴⁹ For purposes of this listing, disorganization of

⁴³ Supp. Ex., p. 6 (Dr. T, 7/29/14).

⁴⁴ See also Ex. 3.19 (“She cannot even go grocery shopping without having a cart to stabilize her.”) (Dr. T, 6/4/2014).

⁴⁵ See Section 1.00(A)(2)(b) (“examples of ineffective ambulation include...the inability to carry out routine ambulatory activities, such as shopping,...and the inability to climb a few steps at a reasonable pace.”).

⁴⁶ Section 1.04 (“e.g., ...spinal stenosis...”).

⁴⁷ Section 1.04(C).

⁴⁸ Section 1.00(K)(3).

⁴⁹ Section 11.14.

motor function means a significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station.⁵⁰ Ms. Q's lower extremity neuropathy does not rise to this level, and she therefore does not meet this listing.

D. Other Considerations

Ms. Q has not shown that she meets the disability listing for a musculoskeletal disorder under Step 3 of the Social Security Administration's process. However, it is necessary to consider additional factors under the Alaska process for determining eligibility for Interim Assistance benefits.⁵¹ The additional factors are whether: (1) the condition is listed;⁵² (2) the impairment is medically documented;⁵³ (3) the impairment affects the person's activities of daily living;⁵⁴ (4) the person can perform any work (including sedentary work) other than their former work;⁵⁵ and (5) whether the impairment will last twelve months.⁵⁶

1. *Listing*

Ms. Q has a condition that is not listed, but that increases the likelihood that the Social Security Administration will find that she is disabled: obesity. In addition, she has a medical history of several other conditions that are not listed but that, if supported by adequate medical evidence and current symptoms, could result in a determination by the Social Security Administration that she is disabled based on those conditions' effects on her body systems: sleep apnea, hypertension, and diabetes.⁵⁷

Consideration of this factor (whether a condition is listed or not) increases the likelihood that the Social Security Administration will find that Ms. Q is disabled.

⁵⁰ Section 11.04(B).

⁵¹ See In Re M.H., at 2, note 5.

⁵² 7 AAC 40.180(c)(1).

⁵³ 7 AAC 40.180(c)(2).

⁵⁴ 7 AAC 40.180(c)(3).

⁵⁵ 7 AAC 40.180(c)(4).

⁵⁶ 7 AAC 40.180(c)(5).

⁵⁷ See Supp. Ex., p. 10. Diabetes is an endocrine disorder. See Section 9.00(B)(5)(a)(ii) (chronic hyperglycemia evaluated under other listings based on specific effects). Sleep apnea is a respiratory disorder. See Section 3.00(H) (sleep apnea can "cause daytime sleepiness with chronic pulmonary hypertension and/or disturbances in cognitive function."). Hypertension is a cardiovascular impairment. See Section 4.00(H)(1) (hypertension evaluated based on impacts on listings for other body systems).

2. *Medical Documentation*

The medical documentation in this case includes medical reports concerning treatment of Ms. Q's wrist and hand in 2012-2013⁵⁸ and in 2014.⁵⁹ In addition, it contains a functional assessment generated by Dr. T, dated July 29, 2014.⁶⁰ The record includes medical imaging reports for her right hand dating from December, 2012 and February, 2013,⁶¹ and for her lumbar spine in February, 2013.⁶² There is a sufficient medical documentation to form the basis for a reasonable assessment of the likelihood that she will be found disabled based on her hand/wrist, knee, and back issues.

There is no medical documentation concerning the effects that the other conditions in Ms. Q's medical history (obesity, diabetes, hypertension, sleep apnea) may have had on her body systems. However, Ms. Q has not identified any impairments relating to her other body systems that might have been caused by her other medical conditions. In the absence of any indication that Ms. Q has any other potentially disabling impairments, consideration of this factor adds no weight to the probability that the Social Security Administration will find her to be disabled.

3. *Activities of Daily Living*

The phrase "activities of daily living" is not defined for purposes of 7 AAC 40.180(c)(3). However, some of the disability listings specifically address matters that in common understanding would qualify as "activities of daily living."⁶³ Ms. Q's testimony establishes that her ability to engage in these types of activities has been significantly and adversely affected by her impairment.

Given the significant effects that her impairment has on her ability to perform the activities of daily living, consideration of this factor adds to the likelihood that the Social Security Administration will find that she is disabled.

⁵⁸ Ex. 3.9-3.11, 3.13-3.25, 3.28-3.29.

⁵⁹ Supp. Ex., pp. 10-14.

⁶⁰ Supp. Ex.

⁶¹ Ex. 3.12. Ex. 3.30.

⁶² Ex. 3.26-3.27.

⁶³ See, e.g., Section 1.00 (person cannot ambulate effectively if the person cannot sustain "a reasonable walking pace over a sufficient distance to carry out activities of daily living" noting as examples walking a block on rough or uneven surfaces, shopping, or banking); Section 4.02 (chronic heart failure may be considered to have been established when "symptoms occur with ordinary daily activities, i.e., activity restriction as manifested by a need to decrease activity or pace, or to rest intermittently..."); Section 12.04 (activities of daily living defined as including "adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for your grooming and hygiene, using telephones and directories, and using a post office).

4. *Ability to Perform Work (including sedentary work)*

Facts and evidence relevant to this consideration are also relevant to Step 4 and Step 5 of the process used by the Social Security Administration to determine disability. However, there are important procedural and substantive differences between what the Division is called upon to do under 7 AAC 40.180(c)(4), and what the Social Security Administration does under Steps 4 and 5. Procedurally, under 7 AAC 40.180(c)(4) the burden of proof is on the applicant rather than, as it would be if Step 5 were applied, on the Division. Substantively, nothing in 7 AAC 40.180(c)(4) requires consideration of the applicant's age, education and work experience in considering an applicant's ability to work, as is required in Step 5.

The Social Security Administration 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.^[64]

The division concedes that Ms. Q has shown that her impairments significantly limit her ability to perform basic work activities, which include physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling.⁶⁵ However, Ms. Q has not shown by a preponderance of the evidence that she lacks the capacity to perform sedentary work. Consideration of this factor does not add to the likelihood that the Social Security Administration will find that Ms. Q is disabled.

IV. Conclusion

The Division conducted a medical review as to whether Ms. Q met the disability criteria. Medical evidence provided by the applicant or obtained by the Division was submitted into evidence at the hearing, along with the results of the physician's examination required under 7 AAC 40.180(a). Following Steps 1-3 of the process employed by the Social Security Administration to make a disability determination, and taking into consideration the additional factors identified in 7 AAC 40.180(c), Ms. Q has not established

⁶⁴ 20 C.F.R. §416.967(a).

⁶⁵ See 20 C.F.R. §416.921(b)(1).

that she is likely to be found disabled by the Social Security Administration. Accordingly, the Division's decision to deny her application is sustained.

DATED August 28, 2014

Signed _____
Andrew M. Hemenway
Administrative Law Judge

Non-Adoption Options

D. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

The application statute is correct however the additional information added after hearing makes the question moot.

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 29th day of September, 2014.

By: *Signed* _____
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

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