

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

In the Matter of)	
)	OAH No. 15-1242-APA
T F)	Agency No.
_____)	

DECISION

I. Introduction

T F applied for Interim Assistance. A disability adjudicator employed by the Division of Public Assistance (Division) concluded that, while Ms. F’s medical impairment was severe and expected to last for 12 months or longer, her medical impairment did not qualify her for Interim Assistance. The Division notified Ms. F that her application was denied. She requested a hearing to challenge the denial.

Ms. F’s hearing was held on October 8, 2015. She represented herself. Sally Dial, a Public Assistance Analyst with the Division, represented the Division.

The evidence shows that Ms. F is severely physically impaired, that her severe physical impairment meets the 12-month durational requirement, that it does not meet or equal the Social Security disability listings, and that she is not able to perform her previous relevant work. Regardless, she is capable of performing at the sedentary level of work. As a result, Ms. F does not satisfy the Interim Assistance program’s eligibility requirement that she is “likely to be found disabled by the Social Security Administration.”¹ The Division’s decision denying her Interim Assistance application is AFFIRMED.

II. Facts

Ms. F applied for Interim Assistance on June 29, 2015.² Her application was supported by a July 23, 2015 “Preliminary Examination for Interim Assistance” form which was completed by Dr. G, M.D. That form stated her diagnoses were “thoracic spine mild degenerative changes” and “lumbar-sacral spine facet arthropathy of L5-S1.” The form further stated that she was not expected to recover from her conditions.³ Jamie Lang, the Division’s medical reviewer, determined that Ms. F was not employed, that she had a severe medical impairment which was

¹ See 7 AAC 40.180(b)(1).

² Ex. 2.

³ Exs. 3.26 – 3.27.

expected to last 12 months or longer, but that her medical impairment did not meet or equal the Social Security listings for that condition, and that she was capable of working in at least a sedentary capacity.⁴ The Division then denied Ms. F's application on August 26, 2015.⁵

Ms. F is 43 years old. She is literate in the English language. She has a GED. Her work history consists of physical work: she worked for a number of years at the No Name Food Bank, and then worked as a part-time barista for eight years. She lost that job in 2010 when the business ownership changed and has not worked since.⁶

Ms. F experiences back pain. X-rays taken on June 17, 2015 show that her cervical spine is normal, that she has some minimal degeneration and disc space narrowing in the thoracic spine, and some facet arthropathy on her lumbar/sacral spine.⁷

Ms. F testified as follows:

- a. She can walk for approximately one block without pain. She does not use a cane or a walker. Her back condition causes her to fall approximately four times per month.
- b. She can stand for between 10 to 15 minutes before she has to sit down.
- c. She can sit for approximately 20 minutes.
- d. She can lift five pounds, and can bend if done carefully.
- e. She can perform household chores such as vacuuming and doing dishes, but has to take breaks while doing them.

There are no medical documents in the record that contain any medically noted limitations on Ms. F's ability to walk, stand, sit, or lift over a specified weight range.

III. Discussion

A. Introduction

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”⁸ Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income benefits.⁹ Once an applicant is

⁴ Exs. 3.1 – 3.2, 6 – 6.3.

⁵ Ex. 4.

⁶ Ms. F's testimony; Exs. 3.28 – 3.32.

⁷ Exs. 3.21 – 3.23.

⁸ AS 47.25.430.

⁹ 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).

approved for federal Supplemental Security Benefits, he or she is then eligible to receive Adult Public Assistance benefits.¹⁰

Interim Assistance is a monthly payment in the amount of \$280 provided by the State to Adult Public Assistance applicants while they are waiting for the Social Security Administration (SSA) to approve their Supplemental Security Income application.¹¹ 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.¹²

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”¹³ The Interim Assistance program therefore bases its eligibility determination using the Social Security disability determination process as a model.¹⁴ The SSA uses a sequential five-step evaluation process in making its disability determinations.¹⁵ 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.¹⁶

The first step looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the applicant is not disabled.¹⁷ 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.¹⁸ In order to be considered disabled, the impairment or combination of impairments must be severe,¹⁹ and must be expected to result in death or must have lasted or be expected to last at least 12 months.²⁰ If the impairment is not severe or does not meet the duration requirement,

¹⁰ 7 AAC 40.030(a); 7 AAC 40.170(a).

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

¹² 7 AAC 49.135.

¹³ 7 AAC 40.180(b)(1).

¹⁴ *State of Alaska, Department Of Health And Social Services, Division of Public Assistance v. Gross*, 347 P.3d 116 (Alaska, 2015).

¹⁵ 20 C.F.R. § 416.920.

¹⁶ 20 C.F.R. § 416.920(a)(4).

¹⁷ 20 C.F.R. § 416.920(a)(4)(i).

¹⁸ 20 C.F.R. § 416.908.

¹⁹ 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).

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

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 applicant's impairment satisfies certain impairment-specific criteria (known as "Listings") adopted by the SSA.²¹ If the impairment satisfies a Listing, the applicant is deemed disabled at step three.²² If the impairment does not satisfy a Listing, the analysis proceeds to step four.

At step four, the SSA examines the applicant's ability to perform his or her past relevant work.²³ If the applicant is able to perform his or her past relevant work, the applicant is deemed not disabled. If the applicant is not able to perform his or her past relevant work, the analysis proceeds to the fifth and last step.

Finally, at step five, the SSA examines the applicant's capacity for work, age, education, and work experience to determine whether the applicant can perform other work in the national economy.²⁴ If the applicant is not capable of performing other work, he or she is deemed disabled.²⁵

Step five requires an answer to the question of whether the applicant is capable of performing other work. Answering this question requires the application of the Social Security medical vocational guidelines that include the evaluation of the applicant's residual functional capacity, age, education, English literacy, and previous work experience.²⁶ If the applicant is not capable of performing other work, he or she is disabled.²⁷

B. Application of the Five Step Process

The Division agrees that Ms. F is not currently engaged in substantial gainful activity. This means that she satisfies step one of the five step disability process. The Division also agrees that her physical impairment is severe and has lasted or can be expected to last for 12 months or longer. This satisfies step two of the five step disability process

In order to satisfy step three, Ms. F must meet or equal the SSA medical listings. The Division submitted that she did not. Ms. F's back problems fall in the SSA medical listing

²¹ See 20 C.F.R. Part 404, Subpart P, Appendix 1 (hereafter "Appendix 1").

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

²³ 20 CFR § 416.920(a)(4)(iv).

²⁴ 20 CFR § 416.920(a)(4)(v).

²⁵ 20 CFR § 416.920(a)(4)(v).

²⁶ See 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 201.

²⁷ 20 C.F.R. § 416.920(a)(4)(v).

musculoskeletal category.²⁸ In order for Ms. F to meet or medically equal the criteria set out in the musculoskeletal listing, she must have “an extreme limitation of the ability to walk” or “an extreme loss of function of both upper extremities.”²⁹

While Ms. F testified that her ability to walk is limited, there is no medical evidence corroborating her testimony. There is no medical evidence demonstrating that her ability to use either of her upper extremities is limited. As a result, Ms. F does not meet or equal the listing for the musculoskeletal category. Because Ms. F does not satisfy step three, it is necessary to move on to step four.

In order to satisfy step four, Ms. F must be unable to perform her past relevant work. The Division agreed that Ms. F could not perform her past relevant work (barista). Consequently, Ms. F satisfies step four. It is therefore necessary to proceed to step five.

In order to qualify as disabled under step five, Ms. F must be unable to perform any other work.³⁰ The Division opined that she could, at a minimum, perform sedentary work. The SSA defines sedentary work as follows:

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.^[31]

Ms. F testified that she could walk for a block, and that her ability to stand and sit was limited. Medical evidence, not merely an applicant’s statement of symptoms, is required to establish disability.³² The medical records in evidence do not indicate she is limited in her abilities to walk, stand, sit, or lift. Consequently, the medical evidence in the record fails to show that Ms. F is not capable of performing sedentary work as defined by the SSA.

The SSA medical vocational guidelines for an English literate individual in the 28 - 44 age range, who is limited to sedentary work, with a high school diploma, who has a range of work experience from unskilled to skilled, regardless of whether those skills are transferable, direct a conclusion that the applicant is not disabled.³³

²⁸ See 20 C.F.R. § Pt 404, Subpart P, Appendix 1, § 1.00.

²⁹ 20 C.F.R. § Pt 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1) and 1.00(B)(2)(c).

³⁰ 20 C.F.R. § 416.920(a)(4)(v).

³¹ 20 C.F.R. § 416.967(a).

³² See 20 C.F.R. § 416.929(a) and (b).

³³ 20 C.F.R. § Pt. 404, Subpt. P, App. 2, § 201.27 - 29.

Ms. F is 43 years old. She is literate in English and has a GED. Because she is capable of sedentary work, she falls under the medical vocational rules, which mandate a conclusion that she is not disabled.³⁴

IV. Decision

Ms. F did not meet her burden of proving that she is likely to meet the Social Security Administration's criteria for disability. As a result, the Division's decision to deny her application for Interim Assistance benefits is AFFIRMED.

DATED this 23rd day of October, 2015.

Signed

Lawrence A. Pederson
Administrative Law Judge

Adoption

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

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

DATED this 6th day of November, 2015.

By: *Signed*

Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge, DOA/OAH

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

³⁴ See 20 C.F.R. § Pt. 404, Subpt. P, App. 2, § 201.27 - 29.