

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

In the Matter of)
)
 D B)
_____)

OAH No. 14-0706-SNA
Agency No.

DECISION AFTER REMAND

I. Introduction

D B submitted an application for Food Stamps on April 25, 2014.¹ The Division of Public Assistance (Division) found that her gross income in April and May of 2014 exceeded the allowable amount of income and denied her application.² Ms. B then requested a hearing. The hearing commenced on May 27, 2014, and was continued to June 10, 2014.³ Ms. B represented herself at the hearing. Public Assistance Analyst Jeff Miller represented the Division. Both Ms. B and Mr. Miller appeared telephonically at the initial and continued hearings.

In initially denying Ms. B Food Stamps, the Division had concluded that Ms. B’s household did not satisfy the criteria of a “categorically eligible” household, and further found that she did not satisfy the income requirements for the Food Stamp program under the “gross income” test.⁴ At the hearing, Ms. B did not contest these determinations. Instead, Ms. B argued that she was receiving disability payments from the State of Alaska and that the Division had erred by not using the “net income” test to determine her eligibility for Food Stamps because she was disabled.⁵

A proposed decision was issued on July 7, 2014, which found that the Division should have used the “net income” test in determining whether Ms. B’s household was eligible for Food Stamps, because Ms. B was disabled. The Division filed a proposal for action, arguing that it had not been established that Ms. B is disabled within the meaning of 7 C.F.R. § 271.2. The Division further noted that such a finding is necessary before the Division can apply the net

¹ Congress changed the official name of the Food Stamp program to the Supplemental Nutrition Assistance program (“SNAP”). However, the program is still commonly referred to as the Food Stamp program.

² Exh. 4 & 5.

³ During the initial telephonic hearing, Ms. B was advised that the Division had submitted 16 Exhibits in support of its position. Ms. B then requested that the hearing be continued because she had not received a copy of these exhibits.

⁴ *See* Division’s Fair Hearing Position Statement, at p. 1 (hereinafter referred to as “Division’s Position Statement”).

⁵ Testimony of Ms. B.

income test to Ms. B's household.⁶ Consequently, the Commissioner's designee declined to adopt the ALJ's proposed decision and, in accordance with AS 44.64.060(e)(2), returned this case to the ALJ to:

- (1) take additional evidence about the nature of the disability; and
- (2) make additional findings about whether or not Ms. B's medical condition meets

Social Security Administration (SSA) listings for a permanent disability.

Three supplemental telephonic hearings were held to address these issues.

Based upon testimony at the supplemental hearings and medical records that Ms. B submitted from her treating physician, Ms. B has a disorder of the musculoskeletal system. She suffers constant, severe pain. Ms. B's physical impairments and the pain associated with them have resulted in an extreme loss of function in her upper extremities. Accordingly, Ms. B is "disabled" within the meaning of 7 C.F.R. § 271.2 because she has a permanent disability that is included in the Social Security Administration's list of permanent disabilities. Because she is disabled within the meaning of 7 C.F.R. § 271.2(5), the Division should apply the "net income" test to determine if Mrs. B's household is eligible for Food Stamps.

II. Facts

Ms. B is a fifty-year-old female who began receiving disability payments from the State of Alaska's Division of Retirement and Benefits in 2000.⁷ She is unemployed and she applied for Food Stamps after her grandson, S S, began living with her.⁸ At the initial hearing, the Division's position statement and the Division's evidence focused on one issue: whether Ms. B's household was categorically eligible so that she did not need to meet either the gross or net income eligibility standards in order to receive Food Stamps.⁹ However, Ms. B testified at the initial hearing that her Fair Hearing Request form had been completed by an employee at the Division on her behalf and it did not accurately reflect the basis for her appeal.¹⁰ Ms. B's position was that the Division had used the "gross income" test in denying her application for Food Stamps when it should have used the "net income" test instead.¹¹ Ms. B argued that the

⁶ See Division's Proposal for Action, at pp. 1-2.

⁷ See Exhs. 17.1-17.11.

⁸ See Exh.2.5; Testimony of Ms. B; see also Exh. 2.2.

⁹ See Exh. 7, 7.19, 9.1, & 10.

¹⁰ Testimony of Ms. B.

¹¹ Testimony of Ms. B.

“net income” test was applicable because she was disabled and was receiving disability payments, not retirement income, from the State of Alaska.¹²

After the case was remanded, Ms. B appeared at three supplemental hearings and testified about the pain she experiences on a daily basis and the multiple surgeries she has undergone.¹³ The record was held open until October 9, 2014 to permit Ms. B to provide medical records that would corroborate her testimony. Medical records were provided.

The supplemental records Ms. B provided consisted of medical records from Dr. D, Ms. B’s treating physician since 1991.¹⁴ These medical records stated that Ms. B had undergone three laminectomies for her back and neck since 1989, has degenerative disc disease, lumbar and cervical radiculopathy, cervical spondylosis, and postlaminectomy syndrome.¹⁵ Ms. B’s medical records also described the persistent pain that she endures.¹⁶ Because Ms. B’s pain is so significant, her physician has prescribed various narcotics such as hydrocodone, OxyContin, and oxycodone for Ms. B’s pain relief.¹⁷ Ms. B also has undergone other pain relief treatments, such as epidural steroids, facet blocks, and acupuncture.¹⁸ These medical records corroborated Ms. B’s testimony that she has serious physical impairments affecting her back and neck and that she experiences severe pain from these impairments.¹⁹

III. Discussion

A. Which Income Test Is Applicable?

If a household is “categorically eligible,” then the household does not need to meet either the gross or net income eligibility standards.²⁰ In order to be categorically eligible, all members of the household must receive Supplemental Security Income (SSI) benefits or Public Assistance (PA) benefits that are in whole or in part federally funded.²¹

¹² Testimony of Ms. B.

¹³ Testimony of Ms. B. The supplemental hearings to address issues raised by the remand took place on August 28, 2014, September 8, 2014, and October 2, 2014.

¹⁴ Exh. 18.

¹⁵ Exhs. 18.7; 18.5.

¹⁶ Exhs. 18.5-18.7.

¹⁷ Exh. 18.4.

¹⁸ Exh. 18.6.

¹⁹ Testimony of Ms. B.

²⁰ See 7 C.F.R. § 273.9(a).

²¹ See 7 C.F.R. § 273.2(j)(2) & (j)(4).

The evidence in the record showed that Ms. B was not receiving SSI or PA benefits from federal funds.²² Thus, the Division was correct in its assessment that Ms. B was not categorically eligible and, therefore, her income must be counted in determining her household's eligibility for Food Stamps. This is not, however, the end of the inquiry regarding whether Ms. B's household was eligible for Food Stamps in April or May of 2014.

Federal regulation 7 C.F.R. § 271.2 defines "disabled member of a household" as an individual who receives "disability retirement benefits from a governmental agency because of a disability considered permanent under section 22(1) of the Social Security Act."²³ The Division initially disputed that Ms. B was receiving disability retirement benefits from a governmental agency. It continues to dispute that Ms. B has a disability that would be considered a permanent disability under SSA regulations. Those two issues are addressed below.

Evidence in the record established that the Division used the gross income test in determining whether Ms. B's household was eligible for Food Stamps in April and May of 2014.²⁴ The Division reached this conclusion after deeming Ms. B's income from the State of Alaska to be "retirement income."²⁵ Ms. B's April 25, 2014 application for Food Stamps stated only that she had a physical, mental, or emotional health condition that caused limitations in her daily activities.²⁶ However, her income verification information clearly identified that the money she received from the State of Alaska's Division of Retirement and Benefits was "disability" income.²⁷

Ms. B argued at the first hearing that the "net income" test should have been used to determine her eligibility because she was receiving *disability* income rather than retirement income.²⁸ The regulations on income eligibility for Food Stamps state, in pertinent part, that:

Households which contain an elderly **or disabled** member shall meet the **net income eligibility standards** for the Food Stamp Program. Households which do not contain an elderly or disabled

²² See Division's Position Statement, at 1.

²³ 7 C.F.R. § 271.2(5).

²⁴ See Division's Position Statement, at 1-2; *see also* Exhs. 6.2 & 6.3.

²⁵ Ms. B's Food Stamp Application, in question no. 97, stated that she received "Medical Retirement" which the Division interpreted as "retirement income." *See* Exhs. 2.6, 6.2, 6.3, & 7. In actuality, her income verification information submitted to the Division lists her monthly payments from the Division of Retirement and Benefits as "disability" income. *See* Exh. 5.1. The Division used the gross income test because it mischaracterized this income as "retirement income." *See* Exhs. 4 & 5.

²⁶ Exh. 2.1.

²⁷ Exh. 5.1

²⁸ Testimony of Ms. B.

member shall meet both the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program.²⁹

The Division at the first hearing questioned whether the income Ms. B was receiving was truly disability income from the State of Alaska.³⁰ Consequently, the record was left open for ten days to allow Ms. B to provide further substantiation that the money she was receiving from the State was disability income, and to permit the Division to respond to any additional evidence. Ms. B subsequently submitted exhibits substantiating her testimony that she was receiving “occupational disability” benefits from the State and would continue to do so until her normal retirement age.³¹ The Division did not further contest this fact.³² Ms. B thus demonstrated that she is receiving disability retirement benefits from a state government.³³ This fact alone, however, does not establish that Ms. B is disabled for purposes of the “net income” test, which was the basis for the remand.

Under 7 C.F.R. § 271.2(5), there are additional criteria that Ms. B must satisfy in order for the Division to apply that test.³⁴ Specifically, Ms. B has to have a disability considered permanent under section 221(i) of the Social Security Act (Act), and her disability must fall within the current list of permanent disabilities compiled by SSA in Appendix I of 20 C.F.R. § 404 Subpart P.

A five-step sequential test is used to determine whether an applicant is “disabled” as that term is used under the Act.³⁵ First, Ms. B must show she is not currently engaging in substantial gainful activity.³⁶ Second, if Ms. B can make that showing, she then must demonstrate she is

²⁹ 7 C.F.R. § 273.9(a) [emphasis added].

³⁰ *See* Exh. 5.1.

³¹ Exhs. 17.1-17.11.

³² The Division responded to the exhibits that Ms. B provided as supplementation to the record after the hearing by stating once again that Ms. B was not “categorically eligible” for Food Stamps, but admitted that she was receiving disability payments from the State of Alaska’s Public Employee Retirement System (PERS). The Division did not address the issue of whether Ms. B’s household would have been eligible for Food Stamps under the “net income” test.

³³ *See* Testimony of Ms. B; *see also* Exhs. 17.1-17.8 & 5.1.

³⁴ Ms. B bears the burden of proving that she is disabled within the meaning of the Act. *See* 20 C.F.R. § 404.1512(a). Although Ms. B worked for the State of Alaska and receives her disability payments from the State of Alaska, the SSA’s requirements for receiving SSA disability payments are incorporated into the Food Stamp requirements. *See* 7 C.F.R. § 271.2(5). Consequently, Ms. B must satisfy the SSA’s standards for receiving disability payments even though she is otherwise ineligible for Alaska disability payments.

³⁵ *See* 20 C.F.R. § 404.1520(a)(4).

³⁶ *See* 20 C.F.R. § 404.1520(a)(4)(i).

suffering from a severe impairment that limits her ability to do basic work activities.³⁷

Assuming Ms. B satisfies the second element of the test, she must then prove that she has an impairment that meets the criteria for a listed impairment under the SSA's listing of permanent disabilities.³⁸ If Ms. B can show she has one of the listed impairments, she has satisfied step three and would be found to be disabled.³⁹ If Ms. B does not have one of the listed impairments, then the analysis proceeds to steps four and five.⁴⁰ However, it is not necessary to address steps four and five where, as here, Ms. B has met her burden of proof in showing that she has one of the listed impairments under the SSA's listing of permanent disabilities.

B. The Nature of Ms. B's Disability

Both at the initial and continued hearings, Ms. B testified that she had undergone multiple surgeries on her back and neck and that she experienced severe pain on a daily basis.⁴¹ The medical records Ms. B submitted, which came from a physician who had been treating Ms. B since 1991,⁴² corroborated her testimony.⁴³ According to the medical records, Ms. B has undergone three laminectomies: in 1989, 1998, and 2006.⁴⁴ In addition, Ms. B has been diagnosed as having cervical degeneration of her intervertebral disc, cervical spondylosis, cervical radiculopathy, lumbar radiculopathy, lumbar degenerative disc disease, and post-laminectomy syndrome.⁴⁵

The medical records also established that Ms. B endures pain on a constant basis and takes Roxicodone, oxycodone, hydrocodone, and OxyContin to control the pain.⁴⁶ Her pain was described as "severe" both in the medical records and by Ms. B in her testimony.⁴⁷ The records further established that Ms. B had a positive Spurling's test, has pain in both shoulders, and has

³⁷ See 20 C.F.R. § 404.1520(4)(ii).

³⁸ See 20 C.F.R. § 404.1520(4)(iii).

³⁹ See 20 C.F.R. § 404.1520(4)(iii).

⁴⁰ See 20 C.F.R. § 404.1520(4)(iv)-(v); see also 20 C.F.R. § 416.920(4)(iv).

⁴¹ Testimony of Ms. B.

⁴² See Exh. 18.2. A treating physician's opinion is typically given great deference. See *Ryan v. Astrue*, 5 F.Supp. 3d 493, 504-505 (S.D.N.Y. 2014); see also *Hayes, v. Comm'r of Social Sec. Admin.*, 2012 WL 954635 (W.D. Pa. 2012).

⁴³ See Exhs. 18.1-18.12.

⁴⁴ Exh. 18.7.

⁴⁵ Exhs. 18.5 & 18.7. Cervical spondylosis is osteoarthritis of the cervical spine and radiculopathy is a nerve root disorder that causes pain and neurologic deficits. Muscles innervated by the affected root become weak and atrophy. See *Merck Manual*, at pp. 1912 & 1901.

⁴⁶ Exhs. 18.4 & 18.11

⁴⁷ Exhs. 18.4-18.7 & 18.11; testimony of Ms. B.

constant shooting, burning, and throbbing pain in both legs.⁴⁸ Besides taking prescribed narcotics, the medical records show that Ms. B has had facet blocks, received epidural steroids, and has undergone hypnosis and acupuncture in an attempt to alleviate her pain.⁴⁹

C. Determining Whether Ms. B is Disabled Under the SSA

Under Step 1 of the Act's five-step sequential analysis, Ms. B must show that she is not engaging in any gainful activity. Ms. B testified and stated in her application that she is unable to work.⁵⁰ Moreover, Ms. B's medical condition is severe enough that she has received disability payments from the State of Alaska since 2000, despite periodic re-evaluations by the State of her medical condition.⁵¹ The Division has produced no evidence to contradict Ms. B on this point. Consequently, Ms. B has met her burden of proof with regard to step 1.

Step 2 requires a determination that Ms. B is suffering from a severe impairment that has lasted or can be expected to last for a continuous period of not less than 12 months.⁵² Ms. B's medical records show that she has had three major surgeries on her neck and spine and she has testified that she will be having another surgery in the near future.⁵³ Her physician has indicated that she needs a "new back" to be able to return to work and she is on several different prescribed narcotics for pain management.⁵⁴ Ms. B's medical records indicate that she suffers from lumbar degenerative disc disease, cervical degeneration of intervertebral disc, and cervical spondylosis⁵⁵ – conditions which, by their nature, worsen over time.⁵⁶ In addition, Ms. B's medical records establish that these medical conditions have lasted more than a year.⁵⁷ Accordingly, Ms. B has met her burden of proof with regard to showing that she suffers from a severe impairment.

⁴⁸ Exh. 18.7; 18.10; 18.11. Spurling's test is conducted to evaluate cervical nerve root impingement. In that test, the patient extends the neck and rotates and laterally bends the head toward the symptomatic side and an axial compression force is then applied by the examiner through the top of the patient's head. The test is positive when the maneuver elicits radicular arm pain. See <http://medilexicon.com/medicaldictionary.php?t=90833>.

⁴⁹ Exh. 18.6.

⁵⁰ Testimony of Ms. B; Exh. 2.1 & 2.5.

⁵¹ Exh. 17.2 & 17.6.

⁵² 20 C.F.R. § 416.920(a)(4)(ii); see also 20 C.F.R. § 416.909; 42 U.S.C.1382c.

⁵³ Exh. 18.7; testimony of Ms. B.

⁵⁴ Exhs. 17.6; 18.4.

⁵⁵ Exh. 18.5.

⁵⁶ The term "degenerative" is defined as "relating to degeneration." The term "degeneration" is then defined as the "gradual deterioration of specific tissues, cells, or organs with impairment or loss of function, caused by injury, disease, or aging." See *Stedman's Medical Dictionary* (2002) at 214. "Spondylosis" also is a degenerative disease of the spinal column. See *Stedman's Medical Dictionary* (2002) at 781.

⁵⁷ Exhs. 18.4-18.11.

Step three requires Ms. B to show that her physical impairments are on the SSA’s list of permanent disabilities.⁵⁸ Disorders of the musculoskeletal system are included in the SSA’s list of permanent disabilities.⁵⁹ Such disorders include degenerative disc disease and similar spinal disorders, including muscle weakness and atrophy.⁶⁰ Ms. B’s medical records establish that she has several physical conditions on the SSA’s list of permanent disabilities – *i.e.*, lumbar degenerative disc disease, cervical degeneration of intervertebral disc, and cervical spondylosis.⁶¹

Ms. B must, however, also demonstrate that she is either unable to ambulate effectively or show an inability to perform fine and gross movements effectively due to an extreme loss of function in both upper extremities as a result of these conditions.⁶² Pain may be an important factor contributing to functional loss.⁶³ By her own admission, Ms. B is able to ambulate effectively.⁶⁴ Therefore, the issue here is whether she is unable to perform fine and gross movements effectively because she has “an extreme loss of function of both upper extremities.”⁶⁵

Ms. B testified that she is unable to use her right arm.⁶⁶ Her medical records further establish that she has pain, numbness, tingling, biceps atrophy, and weakness with regard to her right arm.⁶⁷ Ms. B also has pain in both of her shoulders that require using narcotics for pain control, has no sensation in her arms, and can only pick up 5 pounds with her left hand, such as a fork and plate.⁶⁸ Ms. B also testified that she could not sort or handle papers or files and could

⁵⁸ 20 C.F.R. § 404.1520(a)(4)(iii); *see also* 7 C.F.R. 273.2(f)(1)(viii)(A)(4).

⁵⁹ Appendix I of 20 C.F.R. 404, Subpart P. *available at* <http://www.ssa.gov/disability/professionals/bluebook/1.00-Musculoskeletal-Adult.htm>.

⁶⁰ Appendix I of 20 C.F.R. 404, Subpart P. *available at* <http://www.ssa.gov/disability/professionals/bluebook/1.00-Musculoskeletal-Adult.htm> (section 1.04).

⁶¹ Degenerative disc disease (which would include spondylosis) and other disorders of the spine that result in nerve root impingements are on the social security administration’s list of permanent disabilities. *See* 20 C.F.R. § 404, Subpart P., *available at* <http://www.ssa.gov/disability/professionals/bluebook/1.00-Musculoskeletal-Adult.htm>.

⁶² *See* Appendix I of 20 C.F.R. 404, Subpart P at 1.00(B)(2)(c), *available at* <http://www.ssa.gov/disability/professionals/bluebook/1.00-Musculoskeletal-Adult.htm>.

⁶³ *See* Appendix I of 20 C.F.R. 404, Subpart P. at 1.00(B)(2)(d), *available at* <http://www.ssa.gov/disability/professionals/bluebook/1.00-Musculoskeletal-Adult.htm>.

⁶⁴ Testimony of Ms. B.

⁶⁵ *See* Appendix I of 20 C.F.R. 404, Subpart P at 1.00(B)(2)(c), *available at* <http://www.ssa.gov/disability/professionals/bluebook/1.00-Musculoskeletal-Adult.htm>.

⁶⁶ Testimony of Ms. B.

⁶⁷ Exhs. 18.4 & 18.6.

⁶⁸ Exh. 18.11; testimony of Ms. B.

not place files in a file cabinet at or above waist level.⁶⁹ In addition, Ms. B has also been diagnosed with reflex sympathetic dystrophy of the upper limb, which is a syndrome characterized by severe burning pain in an extremity.⁷⁰ According to her medical records, Ms. B has been treated with physical therapy, acupuncture, hypnosis, pain medication, epidural steroids, and facet blocks to alleviate her pain during the past few years.⁷¹ Ms. B's testimony about constant, severe pain is consistent with her medical records and a diagnosis of degenerative disc disease, radiculopathy, and spondylosis.

Based on Ms. B testimony and her medical records, she has satisfied her burden of proof in demonstrating that her physical impairments are on the social security administration's list of permanent disabilities. Moreover, Ms. B, through her testimony as corroborated by her medical records, has shown that she has suffered an extreme loss of function of both of her upper extremities due to her physical impairments and the pain associated with them. Accordingly, a finding of disability under the Social Security Act is automatically directed.⁷²

IV. Conclusion

Ms. B has met her burden of proof in establishing that:

- (1) She has a permanent disability; and
- (2) Her disability is on the SSA's list of permanent disabilities.

The Division should, therefore, apply the "net income" test to Ms. B's household in order to determine whether her household is eligible for Food Stamps. Consequently, the case is remanded to the agency to determine if Ms. B is eligible for Food Stamps in April or May of 2014 under the net income test.

Dated this 17th day of November, 2014.

Signed _____

Kathleen A. Frederick
Administrative Law Judge

⁶⁹ An example of an inability to perform fine and gross movements effectively includes the inability to sort and handle papers or files and the inability to place files in a file cabinet at or above waist level. See Appendix I of 20 C.F.R. 404, Subpart P at 1.00(B)(2)(c), available at <http://www.ssa.gov/disability/professionals/bluebook/1.00-Musculoskeletal-Adult.htm>.

⁷⁰ Ms. B's medical records reflect a medical code diagnosis of 337.21, which is the code for reflex sympathetic dystrophy of the upper limb. See <http://www.icd9data.com/2014/Volume1/32-389/330-337/337/337.21.htm>; see also Exh. 18.5.

⁷¹ Exh. 18.6.

⁷² See 20 C.F.R. § 404.1520(4)(iii).

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 25th day of November, 2014.

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

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