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

In the Matter of:	)	
	)	
E N	)	OAH No. 12-0285-APA
_____	)	DPA No.

DECISION

I. Introduction

E N applied for Interim Assistance benefits on June 6, 2012.[1] The Division of Public Assistance denied her application on July 23, on the ground that the Social Security Administration (SSA) had initially denied her application for Social Security Income (SSI) benefits.[2] On August 10, Ms. N requested a hearing[3] and the matter was referred to the Office of Administrative Hearings on August 13.

The administrative law judge conducted a telephonic hearing on November 13. Ms. N represented herself, and Jeff Miller represented the Division. Ms. N and Laura Ladner, a disability adjudicator employed by the Division, provided testimony.

Ms. N's application identified depression and back, hip and neck pain as her disabling conditions.[4] It is undisputed that Ms. N is not employed. Ms. Ladner concluded that Ms. N has a severe mental and physical impairment that will prevent her from working for twelve months.[5] The sole issue at the hearing was whether Ms. N meets the disability criteria for depression, a spinal disorder, or another physical condition. The preponderance of the evidence is that she does not. Therefore, her application is denied.

II. Facts

E N is 46. She was most recently employed in 2006, when she worked as a receptionist.[6] That year, she was treated at the No Name Regional Health Center for post-traumatic stress disorder.[7] In 2006-2008, she was treated for arthritis and lumbar and cervical degenerative joint

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1 Ex. 2.

2 Ex. 4. The SSA denial had occurred on January 20, 2012. Ms. N had appealed that decision on March 1, 2012. *See* Ex. 3; Ex. 7, 7.1.

3 Ex. 5, Ex. 6.

4 Ex. 3.5.

5 Ex. 3.106-3.107

6 Ex. 3.7.

7 *See* Ex. 3.15 (PTSD 2006).

disease at the No Name Regional Health Center, where her primary care provider was Dr. N P, a family practice physician.[8] In addition, from about 2006-2011 she received mental health counseling from E T, Ph.D.[9]

Ms. N is single. She has one child,[10] an autistic son. His presence in the home created stress and made life more difficult for his mother.[11] In early 2010 Ms. N's son went to live at a group home in Utah,[12] which made life easier for Ms. N and improved her mental health.[13] At that time, and for some five years previously, Ms. N was not taking any medication for her depression.[14] In April, 2010, Ms. N saw Dr. P for a complete physical exam,[15] and in May, 2010, she visited Dr. P for "several issues", including thyroid disease, depression and chronic neck pain.[16] On May 10, 2010, on referral for a medication evaluation by Ms. T, T X, an advanced nurse practitioner (ANP) at the health center's mental health clinic, prescribed Citalopram, 20 mg per day, for Ms. N's depression.[17] Two weeks later, because Ms. N was not experiencing any change in her symptoms, ANP X ordered an increase in her prescription for Citalopram to 40 mg per day.[18] After Ms. N's son returned to her home in June, 2010,[19] notwithstanding the increase in her medication, Ms. N's mental health deteriorated.[20] She last visited Dr. T (prior to 2012) in October, 2010.[21]

On May 23, 2012, Ms. N was examined by Dr. P, reporting "severe issues" with respect to neck and back pain and trouble swallowing.[22] Dr. P noted her prior history of depression, and that she had not been seeing a counselor or taking medication, as she previously had been, for that condition or for her thyroid.[23] Dr. P considered depression her "most important issue…as…it keeps her from working, from maintaining a normal lifestyle and from continuing

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8 *See* Ex. 3.6; Ex. 3.15.
9 *See* Ex. 3.6 (8/2007-5/2011); Ex. 3.15 (Depression 2008); Ex. 3.63 (as of 5/2010, since 2006).
10 *See* Ex. 3.15.
11 *See, e.g.*, Ex. 3.54.
12 Ex. 3.49; Ex. 3.61; Ex. 3.74.
13 Ex. 3.66; 3.71; Ex. 3.72; Ex. 3.33 (August 3, 2010).
14 *See* Ex. 3.63, 3.68.
15 Ex. 3.49. Ms. N primarily complained of difficulty swallowing, headaches, and heavy menstrual periods. *Id.*
16 Ex. 3.44.
17 Ex. 3.62, 3.65.
18 Ex. 3.60.
19 *See* Ex. 3.49.
20 Ex. 3.33; Ex. 3.54-3.59.
21 *See* Ex. 3.53 (October 5, 2010), 3.53 (August 17, 2010), 3.56 (August 3, 2010).
22 Ex. 3.28.
23 Ex. 3.28.

to show up for any of her appointments,"[24] and diagnosed chronic severe depression.[25] Dr. P prescribed Citalopram, 40 mg per day.[26] With respect to the back pain, Dr. P found nothing "alarming", but suspected a radiculopathy[27] and prescribed medication.[28] For the thyroid, she considered resuming medication.[29] On June 1, after lab testing showed hypothyroidism, Dr. P did resume the thyroid medication, as well as Celexa for depression.[30] On June 22, Ms. N was evaluated for dysphagia (difficulty in swallowing) by Dr. K B.[31]

Ms. N obtained an appointment with Dr. T for August 22.[32] She visited Dr. P on that date and reported that she did not feel her medication was effective, and that she was finding it difficult to get to her medical appointments due to anxiety while travelling on the bus.[33] She was also having conflicts with her neighbors, which had led to an eviction notice.[34] Dr. P left her medication unchanged.[35] Dr. P noted Dr. B's conclusion that "she had multiple risk factors…which could cause the sensation of dysphagia."[36] At a followup appointment on October 3, Ms. N reported she had only been able to see Dr. T once, missing one appointment herself and having Dr. T cancel another.[37] Dr. P again encouraged her to see Dr. T, noting that the Citalopram "seems to not be working."[38] In October, 2012, Ms. N's mental health condition was described as "major depressive disorder, recurrent, severe, w/o psychotic features."[39] By the time of the hearing, in November, Ms. N's son was no longer in her home, and she was seeing Dr. T every two weeks.[40]

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

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24 Ex. 3.29.
25 Ex. 3.4 (May 29, 2012).
26 Ex. 3.29, 3.31.
27 Ex. 3.29.
28 Ex. 3.30.
29 Ex. 3.29.
30 Ex. 3.25.
31 Ex. A31-A32. Ms. N had previously reported this condition in 2010. *See* note 15, *supra*.
32 Ex. A28.
33 Ex. A28.
34 Ex. A28.
35 Ex. A28.
36 Ex. A28.
37 Ex. A24.
38 Ex. A24.
39 Ex. A6 (October 10, 2012).
40 Testimony of D. N (1:02, 1:06).

required to apply and qualify for federal Supplemental Security Income benefits.[41] 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.[42]

In order to qualify for Interim Assistance benefits, the applicant must be "likely to be found disabled by the Social Security Administration."[43] Thus, Ms. N has the burden of proving, by a preponderance of the evidence, that she is likely to be found disabled by the Social Security Administration.[44]

The Social Security Administration uses a five step evaluation process to determine whether a person is disabled.[45] If a person meets the first three steps, the Division considers that person "likely" to be found disabled by the Social Security Administration for purposes of eligibility for Interim Assistance Benefits.[46] The Division concedes that Ms. N meets the first two steps, in that (1) she is not presently engaged in substantial gainful activity,[47] and (2) she has a severe impairment or combination of impairments that has lasted, or is expected to last, at least 12 months.[48] The sole issue to be resolved is whether she meets the third step, namely, that (3) her impairment meets or equals one of the disability listings adopted by the Social Security Administration.[49]

The Division has adopted the April 1, 2005 version of the Social Security Administration's disability listings for the third step.[50] The Division considered whether Ms. N's impairment met three of the listings: Section 1.04 (disorders of the spine), Section 9.0 (endocrine disorder), and Section 12.04 (affective disorders).[51] The clear preponderance of the evidence is that Ms. N does not have a compromised nerve root or spinal cord, and therefore she does not meet the disability listing for a disorder of the spine.[52] Moreover,

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41 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the SSI standards are not required to apply for SSI benefits. *Id.*

42 7 AAC 40.170(a), (b); AS 47.25.455.

43 7 AAC 40.180(b)(1).

44 2 AAC 64.290(e).

45 20 C.F.R. §416.920.

46 *See* In Re M.H., OAH No. 12-0688-APA (Commissioner of Health and Social Services 2012 (http://aws.state.ak.us/officeofadministrativehearings/Documents/APA/APA120668.pdf).

47 *See* 20 C.F.R. §416.920(a)(4)(i).

48 *See* 20 C.F.R. §416.909, §416.920(a)(4)(ii).

49 *See* 20 C.F.R. §416.920(a)(4)(iii).

50 7 AAC 40.180(b)(1)(B).

51 *See* Ex. 3.106-3.107.

52 Section 1.04 provides that a disorder is a condition "resulting in compromise of a nerve root (including the caudina equina) or the spinal cord[,]" together with other symptoms. 20 C.F.R. Part 404, Subpart P, Appendix 1,

there is no evidence that she meets the disability listing for a thyroid disorder (because there is no evidence of impairment of a body system),[53] and she has not been diagnosed with any of the other conditions and symptoms recognized as an endocrine disorder.[54] The focus of the testimony and evidence, and the central issue in this case, is whether Ms. N meets the listing for an affective disorder.

Section 12.04 provides:

> 12.04. Affective Disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.
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> 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 C are satisfied.
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> A. Medically documented persistence, either continuous or intermittent, of one of the following:
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> 1. Depressive syndrome characterized by at least four of the following:
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> a. Anhedonia or pervasive loss of interest in almost all activities; or
>
> b. Appetite disturbance with change in weight; or
>
> c. Sleep disturbance; or
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> d. Psychomotor agitation or retardation; or
>
> e. Decreased energy; or
>
> f. Feelings of guilt or worthlessness; or
>
> g. Difficulty concentrating or thinking; or
>
> h. Thoughts of suicide; or
>
> i. Hallucinations, delusions, or paranoid thinking; or
>
> 2. Manic syndrome…or
>
> 3. Bipolar syndrome…
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> and
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> 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

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Section 1.04 (2005). The evidence does not indicate a compromise to a nerve root or to the spinal cord. *See* Testimony of L. Ladner (25:48).

[53] Section 9.02 provides that a thyroid disorder is evaluated "under the criteria for the affected body system." 20 C.F.R. Part 404, Subpart P, Appendix 1, Section 9.02 (2005).

[54] *See* 20 C.F.R. Part 404, Subpart P, Appendix 1, Section 9.03 (hyperparathyroidism, with decalcification or an impaired body system), 9.04 (hypoparathyroidism, with recurrent generalized convulsions), 9.05 (neurohypophyseal insufficience (diabetes insipidus), with recurrent dehydration), 9.06 (hyperfunction of the adrenal cortex, with an impaired body system), 9.08 (diabetes mellitus, with significant disorganization of motor functions, acidosis, or retinitis proliferans) (2005).

3. Marked difficulties in maintaining concentration, persistence or pace; or

4. Repeated episodes of decompensation, each of extended duration; or

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.[55]

It is undisputed that Ms. N does not exhibit manic syndrome or bipolar syndrome. Thus, to meet the criteria stated in subsection A, she must have medically documented persistence at least four of the symptoms listed in part 1 of subsection A.[56] In addition, she must meet the criteria stated in either subsection B or subsection C.

Ms. Ladner, the Division's medical reviewer, made no specific finding with respect to subsection A; she concluded only that Ms. N "may…have some residual symptom…and may meet the 'A' criteria." But review of the medical records submitted into the record, as well as of Ms. N's testimony, shows that there is medically documented evidence of the persistence, continuously or intermittently, of only one of the listed symptoms: decreased energy,[57] and that there is not medically documented evidence of persistent: anhedonia, or pervasive loss of interest in almost all activities; appetite disturbance with weight change;[58] sleep disturbance;[59] psychomotor agitation or retardation;[60] feelings of guilt or worthlessness; difficulty

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[55] 20 C.F.R. Part 404, Subpart P, Appendix 1, Section 12.04 (2005).

[56] Ms. Ladner's written report concluded that Ms. N "may" meet the criteria listed in subsection A. Ex. 3.106-107. Her testimony at the hearing was to the same effect. She did not review the criteria individually, either in her written report or in her testimony.

[57] *See* Ex. 3.25 (June 1, 2012); Ex. A33 (July 23, 2012).

[58] *See* Ex. 3.63 ("She reports no problems with her appetite.").

[59] The medical evidence includes reference to sleep disturbance in 2010, but not since then. *See* Ex. 3.63 (May 10, 2010), 3.77 (August 17, 2010).

[60] The only reference to any psychomotor disturbance is a May 10, 2010, notation of "no unusual psychomotor behavior." Ex. 3.64.

concentrating or thinking;[61] thoughts of suicide;[62] or hallucinations, delusions or paranoid thinking.[63]

Because Ms. N did not provide medical documentation of the existence of at least four of the symptoms listed in subsection A of section 12.04, she does not meet the disability listing for an affective disorder. It is therefore unnecessary to determine whether she has met the criteria stated in subsections B or C.

IV. Conclusion

There is not medically documented evidence of persistent symptoms listed in Section 12.04, subsection A. Therefore, Ms. N is unlikely to be deemed eligible for SSI, and she is ineligible for interim assistance benefits. The Division's decision is sustained.

DATED January 15, 2013

Signed
Andrew M. Hemenway
Administrative Law Judge

[61] *See* Ex. A28 (August 22, 2012) ("Her thought pattern seems to be fairly clear"); Ex. 3.54 (August 17, 2010 ("Mental status fair."); Ex. 3.56 (August 3, 2010) ("Mental status good."); Ex. 3.57 (June 22, 2010) ("Mental status good."); Ex. 3.58 (June 8, 2010) ("Mental status is good."); Ex. 3.59 (May 25, 2010) ("Mental status good."); Ex. 3.60 (May 25, 2010) ("cognitively intact"); Ex. 3.61 (May 11, 2010) ("Mental status good."); Ex. 3.64 (May 10, 2010, ANP X) ("Thought process: Organized and relevant….Cognition: Patient reports a decline in her concentration…although memory and concentration were not formally tested.").

[62] Ms. N testified to some recent suicidal thoughts, but she had previously denied them. *See* Ex. 3.64 (May 10, 2010); Ex. 3.29 (May 25, 2012).

[63] ANP X noted that Ms. N reported "vague paranoia" on May 10, 2010. Ex. 3.64. There is no other mention of paranoia in the medical records.

Adoption

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

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 1st day of February, 2013.

By: *Signed*
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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