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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)	
)	
██████████,)	OHA Case No. 08-FH-105
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) applied for Adult Public Assistance and Medicaid on September 5, 2007. (Ex. 2) On January 24, 2008, the Division of Public Assistance (Division) sent her notice her application for benefits was denied. (Ex. 6.0) The Claimant requested a fair hearing contesting the denial on February 6, 2008. (Ex. 6.1) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on May 21, 2008. The Claimant attended the hearing telephonically and represented herself. ██████████, Public Assistance Analyst with the Division, attended in person to represent the Division. ██████████, Disability Ajudicator II from Disability Determination Services, Department of Labor, attended telephonically and testified on behalf of the Division.

ISSUE

Was the Division correct to deny the Claimant's September 5, 2007 application for Adult Public Assistance and Medicaid benefits because the medical evidence did not support her disability claim?

FINDINGS OF FACT

1. The Claimant is currently [REDACTED] years old (birthdate [REDACTED]). (Ex. 4.7) On September 18, 2007, Claimant submitted an Application for Services to the Division. (Ex. 2). On September 18, 2007, the Division determined Claimant was over the Social Security income limit, therefore, disqualifying her for Interim Assistance, but possibly qualifying her for Adult Public Assistance and Medicaid. (Ex. 3 – 3.2).

2. The Claimant has worked as an alcohol/substance abuse counselor and a sales associate. (Ex. 4.7 and 4.35).

3. Claimant was severely beaten and sexually assaulted [REDACTED] years ago, resulting in post-traumatic stress disorder. Since then she has suffered from a stroke ([REDACTED] years ago) and a heart attack ([REDACTED] years ago). (Ex. 4.35-37 and 4.117). Her heart appears to be normal at this time. (Ex. 4.106).

4. A Psychiatric Evaluation performed by David Holladay, M.D., on November 20, 2007 concluded:

Ms. [REDACTED] is a [REDACTED]-year-old [REDACTED] woman with a past history of an acute trauma [REDACTED] years ago, and residual posttraumatic stress disorder symptoms at a moderate level. She has experienced problems with disorganization, paperwork completion, and so forth for much of her life. I find no evidence of an early dementia process at this point. Ms. [REDACTED] does report that her view of life as full of adventure was completely altered following her assault. "It shut me down." It is possible that Ms. [REDACTED]'s stroke and heart attack have also contributed to a worsening of disorganization and anxiety disorder symptoms. Her current psychiatric symptoms are probably interfering with her social and occupational functioning to a moderate extent.

(Ex. 4.37). This is the only medical record directed solely to Claimant's psychiatric condition. The remainder of the records primarily address her physical condition, and then have limited, if any, comments on her psychiatric condition.

5. [REDACTED], M.D., made the following assessment after an annual physical examination performed on August 15, 2007:

Problem #1: Surveillance. Problem #2: Hypertension, controlled on current medications. Problem #3: hypercholesterolemia, controlled on current medications. Problem #4: Rectal bleeding. Problem #5: Asthma, stable on current medications. Problem #6: Allergic rhinitis, stable. Problem #7: Osteoporosis. Note that she actually was intolerant of Fosamax and is off of this. She does have pretty significant osteoporosis and should be on something, but until she gets some other medical coverage, she will not be able to afford anything else. Problem #8: History of gastric ulcer. Problem #9: Coronary artery disease.

(Ex. 4.96).

6. Disability Determination Services performed an eligibility determination on Claimant. Disability Adjudicator I, made the following determination on January 18, 2008:

Medical Information shows this claimant has limitations based upon her physical and mental condition. She has good use of her upper and lower extremities and should not be prevented from performing work of a light nature. This limitation is reasonable given her history of having a heart attack with stenting. Based upon her mental condition, specifically PTSD, she will do best with jobs that do not put her in situations where she is alone with a stranger. Her condition would not prevent her from performing work such as being a sales associate such as she has done in the past. Thus, disability is not established.

(Ex. 4 – 4.123).

The evaluation stated she is capable of walking, standing, sitting, lifting, pushing, pulling, reaching, and carrying. (Ex. 4.9). She has no visual limitations. (Ex. 4.11).

6. Claimant is capable of hearing and speaking. (Testimony at hearing.)
7. The Claimant argued she is not able to take her osteoporosis medication. Because of her inability to take the medication, she is severely hampered.

PRINCIPLES OF LAW

This case involves an application for Adult Public Assistance and Medicaid benefits. When an application is denied, the applicant has the burden of proof¹ by a preponderance of the evidence.²

Adult Public Assistance is a benefit provided by the State of Alaska to every aged, blind, or disabled needy resident who exceeds Social Security income standards. 7 AAC 40.170(c) and (b); AS 47.25.430. An individual who is eligible for and receiving Adult Public Assistance is eligible for Medicaid. 7 AAC 100.410.

In order to qualify for Adult Public Assistance, the applicant must satisfy the Social Security Supplemental Security Income disability requirements as set forth in the Social Security regulations. 7 AAC 40.180(b)(1). The Social Security regulations set out a very specific process that must be followed in order to determine whether someone is disabled:

¹ “Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)

² *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, 1179 n. 14 (Alaska 1986). Preponderance of the evidence is evidence which as a whole shows the fact sought to be proved is more probable than not.

1. Is the applicant performing substantial gainful employment as defined by the applicable Social Security regulations? If so, the applicant is not disabled. 20 CFR 416.920(a)(4)(i). If the applicant is not performing substantial gainful employment, then the applicant must satisfy the next question.

2. Is the applicant's impairment severe? A severe impairment is one that "significantly limits [a person's] physical or mental ability to do basic work activities." 20 CFR 416.920(c). Medical evidence is required to establish an applicant's impairment. 20 CFR 416.908. If an applicant has multiple impairments, the combined effect of all the impairments must be considered in determining whether an applicant is severely impaired. 20 CFR 416.923. If the impairment is not severe, the applicant is not disabled. 20 CFR 416.920(a)(4)(ii). See also 20 CFR 416.921. If an applicant is severely impaired, then the applicant must satisfy the next question.

3. What does a **not** severe impairment mean?

(a) Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities.

(b) Basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting.

20 CFR 416.921.

4. Has the applicant's severe impairment lasted for a continuous period of at least 12 months, or can it be expected to last for a continuous period of at least twelve months? 20 CFR 416.909. If the severe impairment does not satisfy this duration requirement, the applicant is not disabled. 20 CFR 416.920(a)(4)(ii). If the severe impairment satisfies this duration requirement, the applicant must satisfy the next question.

5. Does the applicant's severe impairment meet or medically equal the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1? If it does, the applicant is disabled and no further inquiry is required. 20 CFR 416.920(a)(4)(iii). If the severe impairment does not meet or medically equal the listing of impairments, then the applicant must satisfy the next question.

6. Does the applicant's severe impairment prevent him from doing his previous relevant work? This involves an evaluation of the applicant's residual functional capacity. If the applicant is not prevented from performing his previous relevant work, the applicant is not disabled. 20 CFR 416.920(a)(4)(iv). Otherwise, the applicant must satisfy the next question.

7. Is the applicant 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. If the applicant is not capable of performing other work, he is disabled. 20 CFR 416.920(a)(4)(v). If the applicant experiences more than one impairment, all of them must be taken into account in assessing the applicant's residual functional capacity. 20 CFR 416.945(a)(2) and (e).

ANALYSIS

The issue in this case is whether the Division was correct to deny the Claimant's September 5, 2007 Application for Adult Public Assistance and Medicaid benefits because the medical evidence did not support her disability claim. It is necessary to review the evidence in this case and decide, using the Social Security analysis, if the Claimant's impairments satisfy the Social Security disability criteria. If they do, the Claimant is disabled by Social Security standards and eligible for Adult Public Assistance benefits. If they do not, the Claimant is not disabled by Social Security standards and is not eligible for Adult Public Assistance benefits.

It is not always necessary to address each requirement in the multi-step analysis in the sequence set forth above. In this case, the Claimant did not meet the impairment severity requirement. Therefore, this decision will only address this step.

A severe impairment is one that "significantly limits [a person's] physical or mental ability to do basic work activities." 20 CFR 416.920(c). See also, 20 CFR 416.921. The Claimant is capable of physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, and handling. (Ex. 4.9). Although Claimant testified regarding her inability to take medication for her osteoporosis, at this time, there is no **medical** evidence demonstrating her osteoporosis is limiting her functions. She has the capacity to see, hear, and speak. (Ex. 4.11 and Testimony at hearing). Although she may be disorganized, she has not demonstrated she is incapable of understanding, carrying out, and remembering simple instructions. The paper work required of an alcohol/substance abuse counselor can be complicated. Therefore, even if she cannot do that paper work, she has not demonstrated she is not able to use judgment and respond appropriately to supervision, co-workers, and usual work situations. (Ex. 4.37). There is no evidence indicating she cannot deal with changes in a routine work setting. 20 CFR 416.921. Therefore, she is not severely impaired.

Since Claimant is not severely impaired, she does not qualify for Adult Public Assistance. Since eligibility for Medicaid benefits is dependent on being eligible for Adult Public Assistance, she is therefore also not eligible for Medicaid benefits.

CONCLUSIONS OF LAW

1. The Claimant does not have a severe impairment.
2. The Division was correct when it denied the Claimant's September 5, 2007 request for Adult Public Assistance and Medicaid benefits.

DECISION

The Division was correct when it denied the Claimant's September 5, 2007 application for Adult Public Assistance and Medicaid benefits.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, the Claimant must send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

An appeal request must be sent within 15 days from the date of receipt of this decision. Filing an appeal with the Director could result in the reversal of this decision.

DATED this ____ day of June, 2008.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this ____ day of June, 2008, true and correct copies of the foregoing were sent to:

Claimant – Certified Mail, Return Receipt Requested.

██████████, Director
██████████, Policy & Program Development
██████████, Staff Development & Training
██████████, Fair Hearing Representative

Al Levitre
Law Office Assistant I