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

In the Matter of)
)
 [REDACTED],) OHA Case No. 08-FH-377
)
 Claimant.) Division Case No. [REDACTED]
)
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Interim Assistance on August 29, 2007. (Ex. 1) The Division of Public Assistance (Division) denied her application for Interim Assistance on May 20, 2008. (Ex. 3) Specifically, the Claimant's medical evidence did not support her disability claim. The Claimant requested a fair hearing contesting the denial on June 2, 2008. (Ex. 4) This office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was held on July 24, 2008. The Claimant appeared telephonically. Attorney [REDACTED] of [REDACTED] represented the Claimant. [REDACTED], Public Assistance Analyst, represented the Division [REDACTED], a registered nurse with the Division, testified on behalf of the Division.

ISSUE

Was the Division correct to deny the Claimant's August 29, 2007 request for Interim Assistance 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. 2.59)

2. [REDACTED], M.D., the Claimant's treating psychiatrist, completed three Preliminary Examination for Interim Assistance Forms (AD #2) dated September 10, 2007, August 30, 2007, and February 12, 2007. Dr. [REDACTED] diagnosed claimant with post traumatic stress disorder and alcohol dependence with early remission. (Ex. 2.2-2.7). Dr. [REDACTED] did not expect Claimant to recover from her condition.

3. [REDACTED], MS, LPC, completed a mental health assessment on April 26, 2006. The assessment was done in the Claimant's home and concluded the Claimant "experiences severe emotional disturbances." (Ex. 2.85). Ms. [REDACTED] stated "it is very difficult for her to leave her apartment and "it usually takes her two days to prepare to do anything outside her apartment." (Ex. 2.85). She provided the following example: "she will prepare herself mentally to do her laundry. She will then do it only when she knows no one will be there." (Ex. 2.85) In addition, Ms. [REDACTED] stated, the Claimant is able to go to the store "with a friend and only when there are few people shopping." (Ex. 2.85). Ms. [REDACTED]'s report stated Claimant admits she is not involved in any other activities. (Ex. 2.85).

4. In the assessment, Ms. [REDACTED] diagnosed the Claimant with posttraumatic stress disorder, chronic by history; alcohol dependence, sustained partial remission; and major depression disorder.¹

5. Claimant has suffered difficulties in her life. Three of her six children have passed away within the past few years. She was in an abusive marriage. She has also experience sexual trauma as a child and adult. The Claimant also has had a long history of alcohol abuse. (Ex. 2.85 and the Claimant's testimony).

6. Ms. [REDACTED]'s 2006 assessment states "[s]he currently is not working due to being disabled." (Ex. 2.85). Prior to that time, she worked as a preschool teacher's aid and odd jobs such as cannery work and painting. (Ex. 2.85). The Claimant testified at hearing she has not worked since 2001.

7. Dr. [REDACTED]'s December 10, 2007 progress notes indicate the Claimant still suffers from mental illness. Dr. [REDACTED] noted the Claimant's agoraphobia² and panic in his December 10, 2007 note. (Ex. 2.66).

8. Division personnel determined the Claimant was not disabled because "insufficient information regarding the client's ability to perform simple routine tasks during sedentary work." (Ex. 2.01). At the hearing, Division personnel stressed the Claimant's alcohol abuse as being a factor in her symptoms.

¹ The assessment also diagnosed the Claimant with rheumatoid arthritis (Axis III) and "[p]roblems with multiple losses, lack of family support, unemployment, poverty." (Axis IV). (Ex. 2.87). The assessment also demonstrates the Claimant experiences a "disassociate [sic] disorder." (Ex. 2.85). Ms. [REDACTED] reports the Claimant stated she suffers from this and that it is being treated by Dr. [REDACTED] and is controlled by medications. (Ex. 2.85). Ms. [REDACTED] also reports prior mental health records "indicate similar behavior" and "[c]ollateral information received indicated they have witnessed [REDACTED] dissociating (They reported [REDACTED] sitting next to them and stating "there goes [REDACTED]")." (Ex. 2.85).

² Agoraphobia is defined as "a phobia of open or public places." Stedman's Medical Dictionary 25 (2002).

9. The Claimant testified she was diagnosed with posttraumatic stress disorder in 1989. She testified her medication keeps her well enough to stay out of a psychiatric hospital. She further testified she has a difficult time leaving her apartment; days go by without food because she cannot make it to the store. She also testified she does not have a problem cleaning, bathing, or doing other chores in her apartment.

PRINCIPLES OF LAW

This case involves an application for Interim Assistance benefits. When an application is denied, the applicant has the burden of proof³ by a preponderance of the evidence.⁴

Interim Assistance is a benefit provided by the State of Alaska to Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve the Supplemental Security Income application. 7 AAC 40.170(a) and (b); AS 47.25.255.

In order to qualify for Interim 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 applicant must either fall within the Social Security Administration's presumptive disability criteria or meet the disability criteria for impairments listed in the Social Security regulations. 7 AAC 40.180(b)(1).

The Social Security regulations governing whether or not an applicant meets the disability criteria for impairments listed in the Social Security regulations set out a very specific multistep process ("sequential evaluation") that must be followed in order to determine whether someone is disabled:

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). If an applicant is severely impaired, then the applicant must satisfy the next question.

³ "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)

⁴ Preponderance of the evidence is defined as follows:

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Black's Law Dictionary 1064 (5th Ed. 1979)

3. 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.

4. 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.

5. 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.

6. 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).

Where there is a combination of exertional (physical strength) and non-exertional (non-physical such as pain, flexibility, and mental) factors that limit or restrict an applicant's ability to work, the assessment must take both the exertional and non-exertional limitations or restrictions into account. 20 CFR 416.969a(d). When a person has both exertional and non-exertional limitations or restrictions that limit his ability to work, it is not necessary to strictly follow the Medical Vocational Guidelines located at 20 CFR Pt. 404, Subpt. P, App. 2. 20 CFR 416.969a(d). Those Guidelines do not mandate a result when a person experiences both exertional and non-exertional limitations or restrictions, but merely provide a framework for a decision. *Id.*

ANALYSIS

The issue in this case is whether the medical evidence supports Claimant's disability claim for Interim Assistance benefits.⁵ It is necessary to review the evidence in this case and decide whether or not the

⁵ The Claimant mentioned briefly that the Division notice violated due process, but the Claimant did not set forth any arguments on this issue. With regards to what constitutes due process, a distinction has been made between individuals whose benefits are terminated (or reduced) and those individuals that are applying for benefits. Richard J. Pierce, Jr., *Administrative Law Treatise* (2002) at 597. Based upon this distinction, some courts have held no due process is required. The United States Circuit courts are divided on this issue and the United States Supreme Court has never definitively resolved the issue. *Id.*

Claimant is disabled for the purposes of the Interim Assistance program. It is necessary to use the Social Security sequential evaluation analysis to decide 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 Interim Assistance benefits. If they do not, the Claimant is not disabled by Social Security standards and not eligible for Interim Assistance benefits.

1. Employment

The Claimant has been unemployed since at least 2006. She therefore satisfies the first step in the Social Security Disability analysis.

2. Severe Impairment

Deciding whether or not an individual is severely impaired is the next step in the disability analysis process. The Division did not specifically address this issue in its testimony or argument. Claimant's inability to leave her home without substantial preparation would severely impair her from gaining employment outside her home. 20 CFR 416.920(c).

3. Duration

The next step is to decide whether or not the Claimant's severe impairment has lasted or can be expected to last for a continuous period of at least 12 months. The medical evidence shows the Claimant's condition existed prior to the April 26, 2006 evaluation, which was over a year prior to her August 29, 2007 application. The medical evidence shows the Claimant's severe impairments have lasted for longer than one year, and satisfy the durational requirement.

4. Meeting or Equaling the Social Security Medical Listings

The next step is to decide whether or not the Claimant's severe impairments meet or medically equal the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1. The Claimant's condition would best fall under the classification of "Mental Impairment - Anxiety Related Disorders." The required level of severity for an anxiety related disorder can be met when both of the following are satisfied;

Recently, the Alaska Supreme Court held that due process required the Division to provide Personal Care Services recipients, with their initial termination (or reduction) notice, the detailed assessment form (PCAT) used by the Division to make determinations for continued benefits. Baker v. State, Opinion No., 6301 (Alaska August 29, 2008). However, the Baker case can easily be distinguished from this case. In Baker, the Claimants were all receiving benefits and would continue to receive benefits during the time needed for the Division to send a proper notice. In this case, the Claimant was not receiving benefits, and therefore, any additional time the Division would take in sending a second notice would only prolong Claimant's ultimate determination and potential benefit start date. In this case, the Division's full assessment was sent to the Claimant on June 17, 2008, (with the Division Position Statement) over a month before the July 24, 2008 hearing. Thus, Claimant suffered no harm and was given adequate information in preparing for her hearing.

1) A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation;" 20 CFR Ch. III Pt. 404, Subpt. P, App. 1, sec. 12.06 A. and

2) "Resulting in complete inability to function independently outside the area of one's home." 20 CFR Ch. III Pt. 404, Subpt. P, App. 1, sec. 12.06 C.

The Claimant has a persistent irrational fear of an activity or situation – leaving her apartment. This results in the Claimant not leaving her apartment and taking an extraordinary amount of time to get ready to leave (two days) when she does leave. The evidence shows she leaves the apartment only on rare occasions: doctor appointments, laundry, and necessary shopping. (Ex. 2.85-87). When she does leave her apartment, she tries to do so when there are no or few people. Thus the Claimant meets the first requirement of the required level of severity.

Claimant's anxiety when leaving her apartment results in a complete inability to function independently outside the area of her home. Thus, the Claimant meets the second requirement of the required level of severity. As a result, the Claimant meets or equals the medical listing for an impairment Anxiety Related Disorder and is disabled according to the Social Security disability regulations. The Claimant has met her burden of proof.

CONCLUSIONS OF LAW

1. Claimant's post traumatic stress disorder meets or medically equals the Social Security listings of impairments because the Claimant has a persistent irrational fear of a specific activity or situation which results in a compelling desire to avoid the dreaded activity or situation, and it completely limits the Claimant's ability to function outside the home.

3. The Division was therefore not correct when it denied the Claimant's August 29, 2007 request for Interim Assistance benefits.

DECISION

The Division was not correct when it denied the Claimant's August 29, 2007 application for Interim Assistance 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 September, 2008.

Patricia Huna-Jines
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this _____ day of September, 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