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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-955  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Interim Assistance on or about November 4, 2008 (Exs. 2.1-2.2). The Division of Public Assistance (DPA or Division) denied her application on November 28, 2008 (Ex. 2.1). The Claimant requested a fair hearing contesting the denial on or about December 24, 2008 (Ex. 3.1). This office has jurisdiction to decide this case pursuant to 7 AAC 49.010.

Hearings were held on January 29, March 5, April 9, and April 16, 2009. The Claimant appeared in person at the first three hearings and appeared telephonically at the fourth and last hearing. The Claimant represented herself and testified on her own behalf. Public Assistance Analyst [REDACTED] appeared in person at each of the hearings to represent and testify on behalf of the Division. [REDACTED], a registered nurse (R.N.) employed by the Division, was to have testified telephonically on behalf of the Division at the hearing of April 9, 2009, but was unable to do so for reasons not in the record. The Division elected to present its case without the testimony of Ms. [REDACTED] rather than reschedule her testimony for a later date.

Following the hearing of April 16, 2009 the record was left open until May 1, 2009 for the submission of additional medical documentation by the Claimant. Additional medical records were received from the Claimant on April 20 and April 22, 2009. The Division was given until May 8, 2009 to file any desired response to the Claimant's post-hearing evidence. The Division filed no response. On May 20, 2009 this Office received 7 pages of additional exhibits from the Claimant.

Because those exhibits were submitted after the filing deadline, they were not considered in the preparation of this decision.

## ISSUE

Was the Division correct to deny the Claimant's application for Interim Assistance Benefits on or about November 28, 2008 based on the assertion that the Claimant did not meet the Interim Assistance Program's disability requirements? <sup>1</sup>

## FINDINGS OF FACT <sup>2</sup>

The following facts were established by a preponderance of the evidence:

1. The Claimant applied for Interim Assistance on or about November 4, 2008 (Exs. 2.1-2.2). The Claimant was born on [REDACTED] (Ex. 2.0062) and was [REDACTED] years old at the time of the last hearing held in this case (Claimant hearing testimony).
2. The Claimant asserted three psychological impairments in this case (Claimant hearing testimony). These are paranoid schizophrenia (Social Security Administration (SSA) Impairment Listing No. 12.03), depression and bipolar disorder (both categorized under SSA Impairment Listing No. 12.04), and anxiety, panic disorder, and post traumatic stress disorder (PTSD) (all three categorized under SSA Impairment Listing No. 12.06).
3. The Claimant herself did not appear to assert any physical (non-psychological) impairments. However, review of medical records dated April 20, 2009 indicates that treating physician [REDACTED], D.O. has diagnosed the Claimant as suffering from Parvovirus and Epstein-Barr virus (Exs. G-0 – G-1; H-15 – H-16). These conditions have not yet been categorized by the Social Security Administration under any specific impairment listing.
4. Prior to 1998 the Claimant suffered from substance abuse problems (Claimant hearing testimony). However, on January 23, 1998 the Claimant was discharged from the Alaska North Addictions Recovery Center (Ex. 2.0055). Her discharge diagnosis was "DSM IV 303.9 – Alcohol Dependence; 304.2 Cocaine Dependence, full remission." *Id.*
5. In 1999 psychiatrist [REDACTED], M.D. found the Claimant to be disabled, for purposes of the State of Alaska General Relief Medical Program, due to depression, paranoid ideation, and auditory hallucinations (Exs. H-12 – H-14). The record does not reflect how long the Claimant received these benefits or whether they were terminated. In any event, the 1999 disability determination was made prior to the substantial amendment of the State of Alaska's Interim

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<sup>1</sup> See denial notice dated November 28, 2008 (Ex. 3.0).

<sup>2</sup> All of the medical reports in the record (approximately 272 pages total) were reviewed and considered during the preparation of this decision. However, some of the medical records were cumulative, and some were less relevant than others. Accordingly, not every exhibit is specifically referenced in this decision. Abbreviations used in the medical reports have been spelled out in this decision for ease of understanding.

Assistance regulations on June 27, 2004 and on January 11, 2006. Because of these amendments, some persons who previously qualified for Interim Assistance benefits, based on the law in effect prior to June 27, 2004, may no longer qualify for those benefits under current law.

6. On November 29, 2005 the Claimant underwent a psychiatric assessment performed by treating source [REDACTED], A.N.P. (Exs. D9 – D16).<sup>3</sup> The report of that assessment provides in relevant part as follows:

\* \* \* \* \*

. . . . Patient reports a decreased interest by not wanting to affiliate with people, meeting, and commitments . . . . patient reports hyperarousal with poor sleep, difficulty falling asleep and staying asleep. Patient reports frequent rages . . . . Patient reports poor concentration easily distracted, feels flighty, and doesn't finish tasks. Patient reports hypervigilance . . . with an exaggerated startle response.

Patient reports she was diagnosed with a thyroid problem in 2001 which patient reports the symptoms mimic bipolar. . . .

\* \* \* \* \*

. . . . Current target symptoms identified are high pain, moderate depression, rapidly changing mood swings, moderate – high anxiety, poor sleep secondary to racing thoughts, and moderate irritability. . . .

Diagnostic Formulation:

- Axis I: 309.81 Post-Traumatic Stress Disorder, chronic.  
303.90 Alcohol Dependence with Physiologic Dependence, sustained full remission (sober 1999).  
304.20 Cocaine Dependence with Physiologic Dependence, sustained full remission (sober 1999).
- Axis II: 799.9 deferred.
- Axis III: . . . . Congenital unilateral dislocation of hip, history of thyroid nodule, and TBI 11/12/93. Current kidney pain.
- Axis IV: Problems with primary support group, social environment, economic, chronic PTSD, and kidney pain.
- Axis V: GAF current 68 past year 90.

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<sup>3</sup> See discussion in Principles of Law, below regarding the three types of medical sources recognized by the Social Security disability regulations (treating sources, examining sources, and reviewing sources), and the different weights given the testimony or records of these sources.

Prognosis: With treatment the probability of successful achievement of treatment goals [is] good . . . . Without treatment prognosis is guarded; patient has had one API admission and continues to decompensate, may require hospitalization.

\* \* \* \* \*

7. A Clinic Note by treating source [REDACTED], A.N.P. dated December 14, 2005 (Exs. B-27 – B-28) states in relevant part as follows:

\* \* \* \* \*

. . . . Patient reports she has converted from doing housekeeping which is a laborious job, back to bookkeeping, reading, accounting for 8 hours a day, and so she is adjusting to that . . . however, work is going very well. Patient has been preparing the books for the company audit . . . .

\* \* \* \* \*

8. On January 25, 2007 the Claimant underwent a psychiatric assessment performed by treating source [REDACTED], M.S.W. (Exs. D4 – D8). The report of that assessment provides in relevant part as follows:

\* \* \* \* \*

. . . . She has problems with sleeping, concentration, focus problems, feelings of worthlessness, loss of energy, tiredness, fatigue and irritability . . . .

\* \* \* \* \*

. . . . She reported panic attacks . . . evidenced by hyperventilation, heart palpitations, sweating, lightheadedness which was reported to last 2-3 minutes. Patient reported that these symptoms occur day and night.

\* \* \* \* \*

Patient also reports a history of concussions . . . .

\* \* \* \* \*

Educational history: She reports receiving a high school diploma as well as a bachelor's degree. She has her CDC1 certification.

\* \* \* \* \*

Occupational [history]: . . . . [She worked] as a detox case manager in 2005, at Arc of Anchorage as a substance abuse counselor in 2004-2005, at Alaska Trailblazing as a janitor in 2005 – 2006 . . . .

\* \* \* \* \*

Diagnostic Formulation:

- Axis I: 296.35 major depressive disorder, recurrent, in partial remission with seasonal patterns.  
309.81 post-traumatic stress disorder.  
303.90 alcohol dependence, according to patient, in sustained full remission.
- Axis II: Deferred.
- Axis III: Asymmetrical thyroid.
- Axis IV: Economic problems.
- Axis V: GAF +55.

\* \* \* \* \*

9. A note by treating source [REDACTED], M.S.W. dated March 21, 2007 (Ex. C-14) states in relevant part as follows:

\* \* \* \* \*

. . . . [Claimant] reports her depression symptoms have improved: sleeping 8+ hours, concentration and focus has improved, worthlessness has decreased, energy has increased, fatigue decreased, irritability has decreased . . . hypervigilance has decreased, nightmares have decreased, panic attacks have decreased significantly.

\* \* \* \* \*

10. A Clinic Note by treating physician [REDACTED], M.D. dated January 4, 2008 (Exs. B-7 – B-8) states in relevant part that “[the Claimant] experienced frequent nightmares as a child [but now] the nightmares only come once or twice a year . . . .”

11. A Psychiatric Intake Report by treating physician [REDACTED], M.D. dated April 4, 2008 (Exs. D-1 – D-3) states in relevant part as follows:

\* \* \* \* \*

. . . . My impression now is that [the Claimant] . . . no longer suffers frank symptoms of PTSD [but] she is susceptible to panic attacks.

Over the last year, she worked in part as a hair cutter [but] this proved to be very stressful and simply was not a good fit. More recently, she worked as a counselor at a drug treatment program. This proved to be excessively stressful for her and resulted in a recurrence of rather severe panic attacks . . . . [E]xcessively stressful work is not a good fit for her as it triggers old symptoms including panic and other residual effects of trauma. She has left the job at the treatment program and has resumed business in cleaning homes at which she has been quite successful over the years . . . . She tells me that her panic attacks have stopped completely . . . . She recently had a full physical exam with labs which indicated that she is in good health.

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Clinical Summary: . . . For now, I will list her primary diagnosis as panic disorder, now largely resolved.

\*\*\*\*\*

Diagnosis:

- Axis I: Panic disorder without agoraphobia (now in remission) 300.01, history of post-traumatic stress disorder 309.81, history of polysubstance dependence in sustained remission.
- Axis II: No diagnosis 799.9.
- Axis III: No diagnosis.
- Axis IV: Other.
- Axis V: 70

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12. A letter from treating physician [REDACTED], D.O. dated July 16, 2008 (Ex. 0012, Ex. 2.11, Ex. 2.0024) states in relevant part as follows:

Patient currently is under my medical care. She has multiple medical problems to include the following: (1) Alcohol and cocaine abuse both in remission since December 1999; (2) Post Traumatic Stress Disorder; (3) Thyroid Disorder (both hyper and hypo thyroid at various times); (4) Depression, panic disorder, anxiety disorder, social phobia; (5) Shingles; (6) Urinary Incontinence, hemorrhoids; (7) Parvovirus, Epstein Barr virus; (8) Hypertension.

Many of these medical conditions are exacerbated when the patient is in a stressful job or situation. Unfortunately, she has experienced great stress with her various jobs in addictions counseling in the past. Recently, she has had stressors and exposures to allergens in her own cleaning business. In fact, at the present time, any close contact with the general public is enough to cause [the Claimant] considerable stress. I do not think that she will be permanently unable to work with the public but I do recommend that she should be retrained in some field that involves minimal exposure to the public. Her current employment is as a barber.

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13. A *Preliminary Examination for Interim Assistance* (Form AD#2) prepared by treating physician [REDACTED], D.O. dated September 3, 2008 (Exs. 2.5 – 2.6 and 2.8 – 2.9) states that the Claimant’s diagnosis is “social anxiety, substance abuse - in recovery;” states that the Claimant is expected to recover from these conditions in six to twelve (6-12) months; and states that the Claimant’s “recovery depends on changing her stressors at work.”

14. As of September 3, 2008 the Claimant was prescribed the following drugs: diphenhydramine, quetiapine, ibuprofen, flunisolide, and ferrous sulfate (Ex. 2.0057).

15. On or about October 28, 2008 the Claimant requested a hearing on her application for Social Security Disability benefits (Exs. 0035 and 2.0015). The Claimant reported on her Social Security Administration forms dated October 28, 2008 that, among other things, she has low self-esteem seasonal affective disorder; insomnia; is hyper-vigilant; feels detached from others; has trouble remembering things; has a hard time hearing when on the phone; has chronic fatigue; has reoccurring back pain which makes her unable to lift more than 10 pounds; and has pain and stiffness in her left shoulder which prevents her from carrying too much (Ex. 2.0021).

16. A DPA "Interim Assistance Medical Review Denial Form" dated October 31, 2008 (Ex. 2.7) indicates that the DPA denied the Claimant's application for Interim Assistance Benefits based on the assertion that the Claimant "does not meet the durational requirement."

17. A second DPA "Interim Assistance Medical Review Denial Form" dated November 19, 2008 (Ex. 2.4) states in relevant part as follows:

This is the second review for this client . . . . Radiology studies submitted indicated a mild level of degenerative disease. The notes indicated that she would be capable of engaging in employment involving a low level of public involvement . . . . The client has multiple treatable chronic problems which do not meet the criteria. There is no indication . . . that the client is unable to participate in her own ADLs and IADLs. Consequently, it would appear likely that the client could participate in some type of work.

18. A Clinic Note by [REDACTED], M.D. dated January 26, 2009 (Ex. B-3) states in relevant part that "[the Claimant] presents consistently as a pressured hypermotoric individual who has difficulty staying focused and on task."

19. As of January 26, 2009 the Claimant was prescribed the following drugs: fluconazole, quetiapine, atomoxetine, ibuprofen, naproxen, and flunisolide (Ex. 0060).

20. A letter from treating physician [REDACTED], D.O. dated January 27, 2009 (Ex. 0058 - 0059) states in relevant part as follows:

[The Claimant] is currently is under my medical care. As indicated previously she has multiple medical problems which have interfered with her ability to maintain employment in the past. The majority of her employment difficulties stem from her psychiatric illnesses. Specifically [the Claimant] suffers from Post Traumatic Stress Disorder, Social Phobia, Anxiety Disorder, Panic Disorder, and Depression. She is currently under the care of Dr. Mark Erickson M.D., Psychiatry, ANMC for all of these issues.

In the past she has abused both alcohol and cocaine. She has been in remission from her addictions since 1999. She actually used her experiences positively to become an alcohol counselor. Unfortunately her other psychiatric illnesses made that job impossible for her to continue. Similarly these illnesses have impeded her subsequent jobs including that of barber and her own house cleaning business.

Additionally she has suffered fatigue and malaise secondary to her recent viral illnesses of Parvovirus and Epstein Barr Virus. Both of these were exacerbated by chemical and organic exposures incurred in the cleaning business.

Most recently [the Claimant] has had a partial tear of her left rotator cuff (shoulder muscle) which makes some shoulder motions impossible. She is to attend physical therapy for rehabilitation of this injury. I anticipate a full recovery from this injury with appropriate rehab.

Other medical problems that [the Claimant] has currently or has had in the past include thyroid disorder, shingles, hypertension, urinary incontinence, and hemorrhoids. These do not affect her ability to work in any way.

21. A Clinic Note by [REDACTED], M.D. dated February 17, 2009 (Exs. B-1 – B-2) states in relevant part as follows:

\* \* \* \* \*

Diagnoses: History of post traumatic stress disorder, panic disorder without agoraphobia (now essentially in remission), rule out attention deficit hyperactivity disorder, history of polysubstance dependence in sustained remission.

Subjective: [The Claimant] has been seen off and on at this clinic since about 1994 by a number of different caregivers. Various diagnoses have been considered, including PTSD, panic disorder, and rule out bipolar disorder, along with struggles with depression. She has been tried on various medications, including lithium, Zoloft, amitriptyline, nortriptyline, paroxetine. Currently she is on low dose quetiapine . . . which she finds to be quite helpful for anxiety. I have followed [the Claimant] for about 2 years now . . . .

\* \* \* \* \*

22. A *Preliminary Examination for Interim Assistance* (Form AD#2) prepared by treating physician [REDACTED], D.O. dated April 20, 2009 (Exs. G-0 – G-1; H-15 – H-16) states that the Claimant’s diagnosis is “social anxiety, Epstein-Barr virus, Parvovirus, substance abuse - in recovery, PTSD, Bipolar d/o;” states that the Claimant is expected to recover from these conditions in six to twelve (6-12) months; and states that the Claimant’s “recovery depends on changing her stressors at work.”

23. A *Preliminary Examination for Interim Assistance* (Form AD#2) prepared by treating physician [REDACTED], M.D. dated April 21, 2009 (Exs. H-17 – H-18) states that the Claimant’s diagnosis is PTSD, depression, anxiety, and substance abuse (now in recovery). The report also states that the Claimant is “hopefully” expected to recover from these conditions in twelve (12) or more months.

24. At the hearing of April 16, 2009 the Claimant testified with regard to her education and employment that she:



- a. Was unemployed at the time of the hearing, and had not worked for the preceding ten (10) months.
- b. Received a certificate in accounting from Alaska Business College in 1978.
- c. Received a bachelor's degree in Human Services from UAA in May 2002.
- d. Has worked for approximately 18 years total.
- e. Worked bussing tables and performing entry level food preparation in high school.
- f. Attended a beauty school but found she was allergic to permanent wave solutions used when working on women's hair, so she was limited to working as a men's hairdresser. She worked in this field for approximately nine months. However, she cannot perform this work anymore because it is too physically demanding and emotionally stressful for her.
- g. Has a total of three years' experience working as a substance abuse counselor and in similar positions. However, she cannot perform this work anymore because it is too stressful for her.
- h. Has a total of five years' experience as a janitor / custodian / housekeeper. However, her Parvo virus and Epstein Barr virus give her chronic fatigue, and this type of work is now too physically demanding for her.
- i. Has a total of five years' experience as a clerical worker / file clerk, secretary, researcher / auditor, and bookkeeper. In these jobs she had very limited contact with the public and these were the least stressful jobs that the Claimant has ever had.

25. At the hearings of April 9 and April 16, 2009 the Claimant testified with regard to her health problems that she:

- a. Bases her assertion of disability on the following impairments: depression, anxiety, panic disorder, post traumatic stress disorder, bipolar disorder, and paranoid schizophrenia.
- b. Has had depression since she was a young teenager; has been diagnosed with PTSD since 1997; has not used alcohol or drugs since 1999; and has had anxiety and panic disorder since approximately 2000.
- c. Has applied for Social Security Disability benefits; her application was initially denied; and she has now appealed that denial.
- d. Is currently taking quetiapine for anxiety and insomnia and has been taking it for at least one year.

- e. Stated that “my situation is deteriorating,” but felt that her case was adequately presented by her medical records.

26. [REDACTED] (RN, BSN, MPA) is a nurse consultant / medical reviewer employed by DPA (Ex. 8.0). She has been a registered nurse since 1969. *Id.* Since September 2003 she has been the medical reviewer for the Interim Assistance program (Ex. 8.1). She is a member of the National Association of Disability Examiners (Ex. 8.3). She has not treated or examined the Claimant. She reviewed the Claimant’s medical records and made the disability determination in this case (Exs. 2.4 and 2.7).

## PRINCIPLES OF LAW

### Introduction; Burden of Proof; Standard of Proof.

This case involves an application for Interim Assistance benefits. When an application is denied, the applicant has the burden of proof<sup>3a</sup> by a preponderance of the evidence.<sup>4</sup>

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 their Supplemental Security Income application. AS 47.25.255; 7 AAC 40.170(a) and (b). The criteria which must be satisfied in order to qualify for Interim Assistance are set forth in 7 AAC 40.180.<sup>15</sup>

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<sup>3a</sup> “Ordinarily the party seeking a change in the status quo has the burden of proof.” *State of Alaska Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

<sup>4</sup> Preponderance of the evidence is defined as “[e]vidence 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* at page 1064 (West Publishing, 5<sup>th</sup> Edition, 1979).

<sup>5</sup> 7 AAC 40.180, titled “initial determination of disability”, provides as follows:

(a) An applicant whose disability is being determined by the department under 7 AAC 40.170(b) must be examined by a psychiatrist or other physician who has entered into a current provider agreement under 7 AAC 43.065. The results of the examination must be provided on a form approved by the department.

(b) The department will make a determination of whether the applicant is disabled based on

- (1) a medical review by the department as to whether the applicant is likely to be found disabled by the Social Security Administration, including whether the applicant's impairment meets (A) The SSI program's presumptive disability criteria under 20 C.F.R. 416.934, as revised as of April 1, 2005, and adopted by reference; or (B) Social Security Administration disability criteria for the listings of impairments described in 20 C.F.R. 404, subpart P, appendix 1, as revised as of April 1, 2005, and adopted by reference;
- (2) medical evidence provided by the applicant or obtained by the department;
- (3) other evidence provided by the applicant under 7 AAC 40.050, if applicable; and
- (4) a review of the written results of the psychiatrist's or other physician's examination under (a) of this section.

The criteria which must be satisfied in order to qualify for Interim Assistance under 7 AAC 40.180 are equivalent to, and incorporate by reference, the criteria which must be satisfied in order to qualify for Social Security Supplemental Security Income (SSI) disability benefits pursuant to Title 20 of the Code of Federal Regulations (CFR).

Pursuant to 20 CFR 404.1505(a), “disability” is defined as “the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.” Based on this definition, the Social Security Administration’s SSI disability analysis contains a very specific multistep process that must be followed in order to determine whether someone is disabled.

### Substantial Gainful Activity

The first step in the analysis is to determine whether the applicant is performing “substantial gainful activity” as defined by the applicable Social Security regulations. “[S]ubstantial gainful activity” means “work that (a) involves doing significant and productive physical or mental duties, and (b) is done (or intended) for pay or profit.” 20 CFR 404.1510 If the applicant is engaged in “substantial gainful activity” based on these criteria, then he is not disabled. 20 CFR 416.920(a)(4)(i). If, however, the Claimant is not performing “substantial gainful activity” as defined by the above-quoted regulations, it is necessary to proceed to the next step of the disability analysis and determine whether the Claimant has a severe impairment.

### Severe Impairment.

The second step in the analysis is to determine whether the applicant’s impairment is “severe” as defined by the applicable Social Security regulations. A severe impairment is one that significantly limits a person’s physical or mental ability to perform “basic work activities.” 20 C.F.R. 404.1521(a); 20 CFR 416.920(c); 20 CFR 416.921(a). 20 CFR 416.921(b) defines “basic work activities.” That regulation states in relevant part as follows:

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)

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(c) In determining whether an applicant's disability meets the criteria set out in (b)(1)(B) of this section, the department will consider whether

- (1) the applicant's condition is listed as an impairment category described in (b)(1)(B) of this section;
- (2) the medical information obtained under (b) of this section documents the applicant's impairment;
- (3) the impairment affects the applicant's activities of daily living;
- (4) the applicant can perform any other work, including sedentary work; and
- (5) the applicant's impairment has lasted or is expected to last for a continuous period of not less than 12 months.

responding appropriately to supervision, co-workers and usual work situations; and  
(6) dealing with changes in a routine work setting.

Evidence from acceptable medical sources is necessary to establish whether a claimant has a medically determinable impairment. 20 C.F.R. § 404.1513(a); see also 20 CFR 416.908. The claimant's own statement of symptoms alone will not suffice. 20 C.F.R. § 416.908.

Acceptable medical sources include licensed physicians; licensed or certified psychologists; licensed optometrists; licensed podiatrists; and qualified speech-language pathologists. 20 C.F.R. § 404.1513(a). The sources may be treating sources, examining sources, or reviewing sources (see discussion below). Substantial weight must be given to the opinion, diagnosis and medical evidence of these medical providers unless there is good cause to do otherwise. 20 C.F.R. § 416.1527(d); see also *Lewis v. Callahan*, 125 F.3d 1436, 1440 (11th Cir.1997).

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 it is necessary to proceed to the next step of the disability analysis and determine whether the Claimant's impairment meets the 12 month durational requirement.

#### Duration.

The next step in the analysis is to determine whether the applicant's severe impairment has already lasted for a continuous period of at least twelve (12) months, or can be expected to last for a continuous period of at least twelve (12) months.<sup>6</sup> 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, then it is necessary to proceed to the next step of the disability analysis and determine whether the Claimant's impairment meets or equals the specific criteria set forth in the Social Security Administration's Listing of Impairments.

#### Severe Impairment That Meets or Equals The Listing.

The next step in the analysis is to determine whether the applicant's severe impairment meets or medically equals the listing of impairments contained in the Social Security regulations located at 20 CFR Part 404, Subpart P, Appendix 1. If the applicant's severe impairment meets or medically equals the listing of impairments contained in the Social Security regulations located at 20 CFR Part 404, Subpart P, Appendix 1, then the applicant is deemed disabled and no further inquiry is required. 20 CFR 416.920(a)(4)(iii). However, if the severe impairment *does not* meet or medically equal the listing of impairments, then it is necessary to proceed to the next step in the analysis and determine whether the applicant can perform his or her prior relevant work.

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<sup>6</sup> Although the issue of duration is technically separate and distinct from the issue of severity, the Social Security Disability analysis, as set forth in federal regulation 20 CFR 416.920(a)(4)(ii), treats the durational requirement as part of the "step two" severity analysis.

### Capability of Performing Previous Relevant Work.

The next step is to determine whether the applicant's severe impairment prevents him or her from performing his or her previous relevant work. If the applicant is not prevented from performing his or her previous relevant work, the applicant is not disabled. 20 CFR 416.920(a)(4)(iv). Otherwise, it is necessary to proceed to the next step in the analysis and determine whether the applicant can perform any other work.

### Capability of Performing Other Work.

Pursuant to 20 CFR 404.1545(a)(5)(ii), if it is determined that a claimant cannot perform his or her past relevant work, it is then necessary to decide whether the applicant "can make an adjustment to any other work that exists in the national economy" or, in other words, to determine whether the applicant is capable of performing other jobs. If the applicant is not capable of performing other work, he or she is disabled. 20 CFR 416.920(a)(4)(v).

## **ANALYSIS**

### Introduction.

As an applicant for Interim Assistance benefits, the Claimant has the burden of proving, by a preponderance of the evidence, that her impairments satisfy the Social Security disability criteria (see Principles of Law, above). If they do, the Claimant is disabled by Social Security standards and is eligible for Interim Assistance benefits. If they do not, the Claimant is not disabled by Social Security standards and is not eligible for Interim Assistance benefits.

The Claimant herself did not appear to assert any physical (non-psychological) impairments. However, review of medical records dated April 20, 2009 indicates that treating physician [REDACTED], D.O. has diagnosed the Claimant as suffering from Parvovirus and Epstein-Barr virus (Exs. G-0 – G-1; H-15 – H-16). Although these conditions have not yet been categorized by the Social Security Administration under any specific impairment listing, they may still serve as a basis for a finding of disability if the other criteria (severity, duration, inability to perform past work or other work) are satisfied.

The mental impairments asserted by the Claimant in this case are paranoid schizophrenia (Social Security Administration (SSA) Impairment Listing No. 12.03), depression and bipolar disorder (both categorized under SSA Impairment Listing No. 12.04), and anxiety, panic disorder, and post traumatic stress disorder (PTSD) (all three categorized under SSA Impairment Listing No. 12.06).

### I. Is The Claimant Performing Substantial Gainful Activity?

The first element of the disability analysis is whether the Claimant is performing "any substantial gainful activity". Pursuant to 20 CFR 404.1510, "substantial gainful activity" means "work that (a) involves doing significant and productive physical or mental duties, and (b) is done (or intended) for pay or profit."

At the hearing the Claimant testified that she was not currently working, and that she had not worked for the past ten (10) months. This testimony was not disputed by the Division. Accordingly, the Claimant has carried her burden and has proven, by a preponderance of the evidence, that she is not performing substantial gainful activity as defined by 20 CFR 404.1510.

## II. Does The Claimant Have a Severe Impairment?

In order to avoid being found to be *not disabled* at this stage, the Claimant must prove that at least one of her impairments is medically severe pursuant to 20 CFR 416.920(c). A “severe impairment” is one that “significantly limits [a person’s] physical or mental ability to do basic work activities.” 20 CFR §§ 404.1520(c) and 416.920(c).

20 CFR 416.921(b) defines “basic work activities.” That regulation states in relevant part as follows:

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.

The criteria used by the Social Security disability regulations to analyze physical impairments are different than the criteria used to analyze mental impairments, as explained below. Accordingly, the Claimant’s alleged physical and mental impairments must be analyzed separately.

### A. The Claimant’s Physical Impairments.

Medical records dated April 20, 2009 indicate that treating physician Elizabeth Clawson, D.O. has diagnosed the Claimant as suffering from Parvovirus and Epstein-Barr virus (Exs. G-0 – G-1; H-15 – H-16).<sup>7</sup> As noted above, these conditions have been recognized but have not yet been categorized by the Social Security Administration under any specific impairment listing.

#### 1. The Claimant’s Parvovirus.

The human parvovirus was not discovered until 1975. See article “Parvovirus B19 Infections” by [REDACTED], M.D., and [REDACTED], M.D. (American Family Physician, October 1, 1999), republished at <http://www.aafp.org/afp/991001ap/1455.html>, date accessed July 8, 2009). Infections caused by human parvovirus B19 can result in a wide spectrum of manifestations,

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<sup>7</sup> One of the Claimant’s treating physicians ([REDACTED], D.O.) has also diagnosed the Claimant with a partial tear of her left rotator cuff (shoulder muscle), thyroid disorder, shingles, hypertension, urinary incontinence, and hemorrhoids (Ex. 0058 - 0059). However, Dr. [REDACTED] stated that the Claimant either had already recovered, or was expected to fully recover from these impairments, and opined that “these [impairments] do not affect [the Claimant’s] ability to work in any way.” (Ex. 0058 - 0059).

including erythema infectiosum, arthropathy, aplastic anemia, transient aplastic crisis, chronic anemia, acute and chronic arthritis, vasculitis, neurologic disease, hydrops fetalis, and fetal death. *Id.*

Although there is no dispute that the Claimant has human parvovirus, there is no evidence in the record indicating that the Claimant suffers from any of the symptoms (listed above) which can be caused by it. The human parvovirus can be completely asymptomatic. *Id.* Without medical evidence of symptoms stemming from human parvovirus which “significantly limit [the Claimant’s] physical or mental ability to do basic work activities,” the Claimant’s human parvovirus cannot be considered a “severe impairment” pursuant to 20 CFR 416.920(c).

In summary, the Claimant has the burden of proving that her parvovirus constitutes a severe impairment, but she has not done so. Accordingly, the Claimant’s parvovirus cannot be considered “medically severe” pursuant to 20 CFR 416.920(c).

## 2. The Claimant’s Epstein-Barr Virus.

Epstein-Barr virus, frequently referred to as EBV, is a member of the herpes virus family and one of the most common human viruses. See article by the National Center for Infectious Diseases, located at <http://www.cdc.gov/ncidod/diseases/ebv.htm> (date accessed July 8, 2009). The virus occurs worldwide, and most people become infected with EBV sometime during their lives. *Id.* In the United States, as many as 95% of adults between 35 and 40 years of age have been infected. *Id.*

The significance of the Epstein-Barr virus is that it is a suspected cause of chronic fatigue syndrome (CFS); the two are sometimes referred to synonymously. <sup>8</sup> In *Sabo v. Chater*, 955 F.Supp. 1456 (M.D. Fla. 1996) the court stated:

Chronic Fatigue Syndrome (CFS), previously known as Chronic Epstein-Barr Virus Syndrome, and also currently called Chronic Fatigue and Immune Dysfunction Syndrome, is a systemic disorder consisting of a complex of variable signs and symptoms which may vary in duration and severity. The etiology and pathology of the disorder have not been established . . . . There is no specific treatment, and manifestations of the syndrome are treated symptomatically.

[Chronic Fatigue Syndrome] is characterized by the presence of persistent unexplained fatigue and by the chronicity of other symptoms. The most prevalent symptoms include episodes of low-grade fever, myalgias, headache, painful lymph nodes, and problems with memory and concentration. These symptoms fluctuate in frequency and severity and may be seen to continue over a period of many months . .

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<sup>8</sup> See generally *Rose v. Shalala*, 34 F.3d 13 (1<sup>st</sup> Cir. 1994); *Difederico v. Rolm Company*, 1995 WL 710561 (E.D. Pa. 1995); *Mitchell v. Eastman Kodak Company*, 910 F. Supp. 1044 (M.D. Pa. 1995); *Sabo v. Chater*, 955 F. Supp. 1456 (M.D. Fla. 1996); *Hilton v. Apfel*, 1998 WL 241616 (S.D.N.Y. 1998); *Bischof v. Apfel*, 65 F.Supp.2d 140 (E.D.N.Y. 1999); *Frazier v. Apfel*, 2000 WL 288246 E.D. Pa. 2000; and *Spears v. Barnhart*, 284 F.Supp.2d 477 (S.D. Tex. 2002).

Because Chronic Fatigue Syndrome has not yet been included by the Social Security Administration in its Listing of Impairments (20 CFR Part 404, Subpart P, Appendix 1), the Social Security Administration has issued a ruling (SSR 99-2p, effective April 30, 1999) to address Chronic Fatigue Syndrome. SSR 99-2p provides in relevant part as follows:

[T]he current CDC <sup>9</sup> definition of [Chronic Fatigue Syndrome] requires the concurrence of 4 or more of the following symptoms, all of which must have persisted or recurred during 6 or more consecutive months of illness and must not have pre-dated the fatigue:

- Self-reported impairment in short-term memory or concentration severe enough to cause substantial reduction in previous levels of occupational, educational, social, or personal activities;
- Sore throat;
- Tender cervical or axillary lymph nodes;
- Muscle pain;
- Multi-joint pain without joint swelling or redness;
- Headaches of a new type, pattern, or severity;
- Unrefreshing sleep; and
- Postexertional malaise lasting more than 24 hours.

Although there is no dispute that the Claimant has Epstein-Barr virus, there is no evidence in the record indicating that the Claimant suffers from four or more of the symptoms (listed above) which must be present in order for the Epstein-Barr virus to be considered to be causing Chronic Fatigue Syndrome (CFS). In the absence of Chronic Fatigue Syndrome, Epstein-Barr virus is not considered a severe impairment under SSR 99-2p.

In summary, the Claimant has the burden of proving that her Epstein-Barr virus constitutes a severe impairment, but she has not done so. Accordingly, the Claimant's Epstein-Barr virus cannot be considered "medically severe" pursuant to 20 CFR 416.920(c).

#### B. The Claimant's Mental Impairments.

The mental impairments asserted by the Claimant in this case are paranoid schizophrenia (Social Security Administration (SSA) Impairment Listing No. 12.03), depression and bipolar disorder (both categorized under SSA Impairment Listing No. 12.04), and anxiety, panic disorder, and post traumatic stress disorder (PTSD) (all three categorized under SSA Impairment Listing No. 12.06).

Mental impairments are evaluated under 20 CFR 404.1520a and 20 CFR 416.920a, which regulations are essentially identical. 20 CFR 404.1520a provides in relevant part as follows:

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<sup>9</sup> CDC stands for Centers for Disease Control and Prevention. CDC is a federal agency, within the Department of Health and Human Services, which investigates, diagnoses, and tries to control or prevent diseases (especially new and unusual diseases). See official CDC website at <http://www.cdc.gov/about/history/ourstory.htm> (date accessed July 13, 2009).



\* \* \* \* \*

(c) Rating the degree of functional limitation.

\* \* \* \* \*

(3) We have identified four broad functional areas in which we will rate the degree of your functional limitation: Activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. See 12.00C of the Listing of Impairments.

(4) When we rate the degree of limitation in . . . (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: None, mild, moderate, marked, and extreme. When we rate the degree of limitation in . . . (episodes of decompensation), we will use the following four-point scale: None, one or two, three, four or more. The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity.

(d) Use of the technique to evaluate mental impairments. After we rate the degree of functional limitation resulting from your impairment(s), we will determine the severity of your mental impairment(s).

(1) If we rate the degree of your limitation in the first three functional areas as “none” or “mild” and “none” in the fourth area, we will generally conclude that your impairment(s) is not severe, unless the evidence otherwise indicates that there is more than a minimal limitation in your ability to do basic work activities (see § 404.1521).

\* \* \* \* \*

Thus, pursuant to 20 CFR 404.1520a and 20 CFR 416.920a, the next step is to rate the degree of the Claimant’s limitations with regard to (1) her activities of daily living; (2) her social functioning; (3) her concentration, persistence, or pace; and (4) episodes of decompensation.

1. Activities of Daily Living.

The Social Security Regulations define “activities of daily living” in relevant part as follows (20 CFR, Part 404, Subpart P, Appendix 1, Section 12.00(C)(1):

Activities of daily living include adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for your grooming and hygiene, using telephones and directories, and using a post office.

The Claimant testified that she has difficulty cleaning, at least on a for-hire, professional basis, because the work is now too physically demanding for her. However, there is no evidence in the record that the Claimant cannot perform her home cleaning and other activities of daily living. Accordingly, the degree of limitation on the Claimant's ability to perform her activities of daily living must be characterized as "none" (1 on a scale of 1-5).

2. Social Functioning.<sup>10</sup>

The Claimant testified that:

1. She can no longer perform men's hair styling because (a) her Parvo virus and Epstein Barr virus give her chronic fatigue, and the work is too physically demanding for her; and (b) dealing with the public is too stressful for her due to her anxiety-related disorders.
2. She can no longer perform her work as a substance abuse counselor and in similar positions because dealing with the public is too stressful for her due to her anxiety-related disorders.

The Claimant's current treating physician [REDACTED], D.O. reported on July 16, 2008 (Ex. 0012, Ex. 2.11, Ex. 2.0024) as follows:

. . . . at the present time, any close contact with the general public is enough to cause [the Claimant] considerable stress. I do not think that she will be permanently unable to work with the public but I do recommend that she should be retrained in some field that involves minimal exposure to the public.

Given Dr. [REDACTED]'s opinion that the Claimant can tolerate a minimal amount of exposure to the public, the degree of limitation on the Claimant's social functioning cannot be characterized as "extreme." However, Dr. [REDACTED]'s opinion, in conjunction with the Claimant's testimony, does support a finding that the Claimant's social functioning is markedly impaired (4 on a scale of 1-5).

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<sup>10</sup> The Social Security Regulations define "social functioning" in relevant part as follows (20 CFR, Part 404, Subpart P, Appendix 1, Section 12.00(C)(2):

Social functioning refers to your capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. Social functioning includes the ability to get along with others . . . . You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority . . . or cooperative behaviors involving coworkers.

### 3. Concentration, Persistence, or Pace.<sup>11</sup>

A Clinic Note by [REDACTED], M.D. dated January 26, 2009 (Ex. B-3) states in relevant part that “[the Claimant] presents consistently as a pressured hypermotoric individual who has difficulty staying focused and on task.” However, the Claimant did not testify that this lack of focus affected her ability to perform her previous work in any way. See Findings of Fact at Paragraph 24, above. Rather, the Claimant asserted that she was unable to perform some of her prior jobs either because contact with the public made them too stressful, or because the work was too physically demanding. *Id.* Accordingly, the degree of limitation on the Claimant’s concentration, persistence, or pace must be characterized as “moderate” (3 on a scale of 1-5).

### 4. Episodes of Decompensation.<sup>12</sup>

The Claimant’s medical records clearly indicate episodes of decompensation *prior to 2006*. See psychiatric assessment performed by treating source [REDACTED], A.N.P. dated November 29, 2005 (Exs. D9 – D16). However, the Claimant’s medical records do not evidence any episodes of decompensation over the past 3.5 years. Accordingly, the degree of the Claimant’s episodes of decompensation must be graded as “none” (1 on 20 CFR 404.1520a’s scale of 1-4).

### 5. Summary – The Claimant’s Mental Impairments Do Not Qualify as Severe.

In summary:

1. The Claimant scored a “none” (1 out of 5) with regard to the “activities of daily living” category.

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<sup>11</sup> The Social Security Regulations define “concentration, persistence, or pace” in relevant part as follows (20 CFR, Part 404, Subpart P, Appendix 1, Section 12.00(C)(3):

Concentration, persistence, or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings . . . . [M]ajor limitations in this area can often be assessed through clinical examination or psychological testing . . . .

<sup>12</sup> The Social Security Regulations define “episodes of decompensation” in relevant part as follows (20 CFR, Part 404, Subpart P, Appendix 1, Section 12.00(C)(4):

Episodes of decompensation are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning . . . . Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two). Episodes of decompensation may be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (e.g. hospitalizations, placement in a halfway house, or a highly structured and directing household); or other relevant information in the record about the existence, severity, and duration of the episode.

2. The Claimant scored “markedly impaired” (4 out of 5) with regard to the “social functioning” category.
3. The Claimant scored “moderate” (3 out of 5) with regard to the “concentration, persistence, and pace” category.
4. The Claimant scored “none” (1 out of 4) with regard to the “episodes of decompensation” category.

Were the Claimant’s average impairment rating under 20 CFR 404.1520a either “marked” or “extreme,” the Claimant’s mental impairments could clearly be rated as “severe” pursuant to 20 CFR 416.920(c). However, where (as here) a claimant’s average impairment rating under 20 CFR 404.1520a is “moderate,” and where the Claimant has scored above “moderate” in only one category, the Claimant’s mental impairments cannot be rated “severe” pursuant to 20 CFR 416.920(c). This conclusion is supported by statements in the Claimant’s recent medical records with regard to her current ability to perform basic work activities:

1. A Psychiatric Intake Report by treating physician [REDACTED], M.D. dated April 4, 2008 (Exs. D-1 – D-3) states in relevant part that “*excessively stressful work* is not a good fit for her as it triggers old symptoms including panic and other residual effects of trauma” [emphasis added].

2. A letter from treating physician [REDACTED], D.O. dated July 16, 2008 (Ex. 0012, Ex. 2.11, Ex. 2.0024) states in relevant part as follows:

[A]t the present time, *any close contact with the general public* is enough to cause [the Claimant] considerable stress. I do not think that she will be permanently unable to work with the public but I do recommend that she should be retrained in some field that involves *minimal exposure to the public*. [Emphasis added].

3. A letter from treating physician [REDACTED], D.O. dated January 27, 2009 (Ex. 0058 - 0059) states in relevant part that the Claimant “has multiple medical problems which have interfered with her ability to maintain employment *in the past*. [Emphasis added].

4. A Clinic Note by treating physician [REDACTED], M.D. dated February 17, 2009 (Exs. B-1 – B-2) states the Claimant’s diagnosis as “[h]istory of post traumatic stress disorder, panic disorder without agoraphobia (*now essentially in remission*), rule out attention deficit hyperactivity disorder, history of polysubstance dependence *in sustained remission*” [emphasis added].

The medical evidence clearly indicates that, from approximately 1999 through 2006, the Claimant was significantly limited in her ability to perform basic work activities (see Findings of Fact at Paragraphs 4 – 7, above). However, the medical evidence demonstrates that since March 21, 2007 the Claimant’s psychiatric impairments have improved considerably (see Findings of Fact at Paragraphs 8 – 10, above). As noted above, the Claimant’s treating psychiatrist, Dr. [REDACTED],

wrote on February 17, 2009 that the Claimant's psychiatric problems were now "essentially in remission" (Exs. B-1 – B-2).

Currently, the medical evidence supports the Claimant's assertions that she cannot or should not perform *excessively stressful work*. However, the medical evidence does not support a finding that the Claimant is significantly limited in her ability to perform "basic work activities" as defined by 20 CFR 416.921(b). In particular, there is no evidence in the record that the Claimant cannot perform her past work as a clerical worker / file clerk, secretary, researcher / auditor, or bookkeeper. The Claimant herself testified that in these jobs she had very limited contact with the public and that these were the least stressful jobs that the Claimant had ever had.

In summary, the Claimant did not carry her burden of proof and failed to prove, by a preponderance of the evidence, that her paranoid schizophrenia (Social Security Administration (SSA) Impairment Listing No. 12.03), depression and bipolar disorder (SSA Impairment Listing No. 12.04), and anxiety, panic disorder, and post traumatic stress disorder (PTSD) (SSA Impairment Listing No. 12.06) constitute "severe impairments" as defined by 20 CFR §§ 404.1520(c), 416.920(c), and 416.921(b). The Claimant is therefore not disabled according to the Social Security Administration's disability regulations, the requirements of which are incorporated by reference into the State of Alaska's Interim Assistance regulations.<sup>13</sup>

### CONCLUSIONS OF LAW

1. The Claimant carried her burden and proved, by a preponderance of the evidence, that she is not currently engaged in substantial gainful activity as defined by 20 CFR 404.1510.
2. The Claimant failed to prove, by a preponderance of the evidence, that her parvo virus, Epstein-Barr virus, paranoid schizophrenia (Social Security Administration (SSA) Impairment Listing No. 12.03), depression and bipolar disorder (SSA Impairment Listing No. 12.04), and/or anxiety, panic disorder, and post traumatic stress disorder (PTSD) (SSA Impairment Listing No. 12.06) constitute "severe impairments" as defined by 20 CFR §§ 404.1520(c), 416.920(c), and 416.921(b).
3. Because the Claimant's impairments are not severe as defined by 20 CFR §§ 404.1520(c), 416.920(c), and 416.921(b), the applicant is deemed not to be disabled pursuant to 20 CFR 416.920(a)(4)(ii).
4. The Division was therefore correct when it denied, on or about November 28, 2008, the Claimant's application for Interim Assistance benefits submitted on or about November 4, 2008.

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<sup>13</sup> Because the Claimant has been found not to be disabled at this step of the analysis, it is unnecessary to determine whether the Claimant satisfies the remainder of the Social Security disability criteria (i.e. whether the impairments satisfy the 12 month durational requirement; whether the impairment meets or equals "the Listings"; and whether the Claimant can still perform her prior work or any other work. See Principles of Law at pages 12-13, above.

**DECISION**

The Division was correct when it denied, on or about November 28, 2008, the Claimant’s application for Interim Assistance benefits submitted on or about November 4, 2008.

**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 July, 2009.

\_\_\_\_\_  
Jay Durych  
Hearing Authority

**CERTIFICATE OF SERVICE**

I certify that on this \_\_\_\_\_ day of July 2009 true and correct copies of the foregoing were sent to the Claimant via U.S.P.S. mail, and to the remainder of the service list by e-mail, as follows:

Claimant – Certified Mail, Return Receipt Requested

- \_\_\_\_\_, Director
- \_\_\_\_\_, Policy & Program Development
- \_\_\_\_\_, Staff Development & Training
- \_\_\_\_\_, Administrative Assistant II
- \_\_\_\_\_, Eligibility Technician I
- \_\_\_\_\_, Fair Hearing Representative

By \_\_\_\_\_  
J. Albert Levitre, Jr.  
Law Office Assistant I