

the Division’s medical reviewer, denied Ms. D’s application because, although she experienced severe conditions, “her conditions do not prevent her from working.”⁸

Ms. D’s hearing was held on June 12 and July 17, 2012. Ms. D represented herself and testified on her own behalf. B P, Ms. D’s caseworker at No Name Community Mental Health Services, assisted in representing Ms. D and testified on her behalf. Terri Gagne, Public Assistance Analyst with the Division, represented the Division. Laura Ladner, the Division’s disability adjudicator/medical reviewer, testified on behalf of the Division. The hearing was recorded.

The record was left open after the July 17, 2012 hearing until August 1, 2012 to allow Ms. D to submit a recent psychological evaluation and for the Division to provide a written response. Neither party provided additional documents. The record therefore closed on August 1, 2012.

B. Ms. D’s Conditions as Demonstrated at the Hearing

Ms. D’s physical impairments consist of hypertension, back pain, chronic obstructive pulmonary disease (COPD), and asthma.⁹ The Division agreed that she experienced severe physical impairments.¹⁰ At hearing, the Division also agreed that her physical impairments met the 12 month durational requirement.¹¹

Ms. D’s most recent x rays (February 27, 2012) show that she has a possible fracture of her coccyx, and degenerative changes at L2 – 3 and L3 – 4 of the lumbar spine.¹² She also has a bone cyst and mild degenerative changes in her left wrist.¹³ Her “thoracic spine alignment is normal.”¹⁴ Emergency room notes from February and March 2012 state that she experiences back, neck, and lumbosacral pain, but that her range of motion, strength, and gait are normal.¹⁵ Medical examination notes from April 20, 2012 diagnose her with COPD and indicate that she uses an albuterol inhaler.¹⁶ The medical documents in the record refer to her asthma, COPD, and hypertension, but do not contain any indication that she suffers adverse effects from these conditions.¹⁷ Those same medical documents do not contain any indication that she has any

⁸ Ex. 2.1.
⁹ Ladner testimony.
¹⁰ Ladner testimony.
¹¹ Ladner testimony.
¹² Ex. A, p. 67.
¹³ Ex. A, p. 70.
¹⁴ Ex. A, p. 66.
¹⁵ Ex. 2, p. 23 (March 16, 2012); Ex. 2, p. 27 (February 18, 2012).
¹⁶ Ex. A, p. 91.
¹⁷ Exs. 2.2 – 2.107; A, pp. 1 – 92; B, pp. 1 – 11, C, pp. 1 – 256.

limitations on her ability to walk, sit, or stand, or that she requires any assistive devices (cane, walker, wheelchair).¹⁸

In addition to her physical impairments, Ms. D has mental impairments consisting of chronic major depression, Bipolar disorder, posttraumatic stress disorder, and polysubstance abuse.¹⁹ The Division agreed that her mental impairments were severe. The Division asserted, however, that Ms. D's mental health impairments might not meet the 12 month durational requirement, arguing that her symptoms might lessen if she received ongoing mental health treatment and refrained from substance abuse.²⁰

Ms. D does not have any psychiatric hospitalizations within the past several years. However, her medical records dating back to September 2010 contain a consistent diagnosis of chronic major depression.²¹ On March 1, 2012 she was also diagnosed with Bipolar Disorder, Type 2.²² Ms. D's medical records, beginning in September 2010, intermittently state that she exhibits rapid/pressured speech, poor impulse control, and scattered, tangential, and disjointed thought processes.²³

Ms. D had an intake behavioral health assessment, performed by a master's level therapist, on April 13, 2012.²⁴ That assessment stated that Ms. D was not then receiving mental health treatment, and that she self-reported auditory and visual hallucinations and flashbacks. The assessment concluded that she was oriented to person/place/time/situation, that her intellectual capacity was average, that her concentration was poor, that her abstract thinking was very impaired, that her short-term memory was fair, that her recent memory was very impaired, and that her remote memory and judgment were good. Her speech was tangential, she experienced flights of ideas, but she had no suicidal or homicidal ideation.²⁵ That assessment diagnosed Ms. D with Bipolar II disorder, anxiety disorder, posttraumatic stress disorder, and marijuana abuse.²⁶

Ms. D started and stopped taking psychiatric medications in March 2012, because she had adverse effects from them.²⁷ As of April 27, 2012, Ms. D was not interested in taking medication

¹⁸ Exs. 2.2 – 2.107; A, pp. 1 – 92; B, pp. 1 – 11, C, pp. 1 – 256.

¹⁹ Ladner testimony.

²⁰ Ladner testimony.

²¹ Ex. 2.100.

²² Ex. 2.68.

²³ Exs. 2.2 – 2.101; A, pp. 1 – 92.

²⁴ Masters of Social Work. Ex. B, pp. 3 – 11.

²⁵ Ex. B, pp. 3 – 11.

²⁶ Ex. B, p. 9.

²⁷ Exs. 2.57, 2.60, 2.62, 2.70.

for her mental health conditions. However, she began taking psychiatric medications six days later, beginning on May 3, 2012.²⁸

There are no psychological evaluations or neuropsychiatric evaluations for Ms. D in the record.²⁹

III. Discussion

A. *The Three Step Interim Assistance Disability Determination Process*

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”³⁰ Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income benefits.³¹ Once an applicant is approved for federal Supplemental Security Benefits, he or she is then eligible to receive Adult Public Assistance benefits.³²

Interim Assistance is a monthly payment in the amount of \$280 provided by the State to Adult Public Assistance applicants while they are waiting for the Social Security Administration (SSA) to approve their Supplemental Security Income application.³³

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”³⁴ An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.³⁵

The SSA uses a five-step evaluation process in making its disability determinations.³⁶ Each step is considered in order, and if the SSA finds the applicant either disabled or not disabled at any step, it does not consider subsequent steps.³⁷

The division uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.³⁸ The first step looks at the

²⁸ Ex. B, p. 1.

²⁹ Ms. P stated there was a recent psychological evaluation for Ms. D. The record was left open to provide Ms. D with an opportunity to submit a copy of this evaluation, but she failed to do so.

³⁰ AS 47.25.430.

³¹ 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the Supplemental Security Income standards are not required to apply for Supplemental Security Income benefits. 7 AAC 40.170(a).

³² 7 AAC 40.030(a); 7 AAC 40.170(a).

³³ 7 AAC 40.170(a) and (b); AS 47.25.455.

³⁴ 7 AAC 40.180(b)(1).

³⁵ A party who is seeking a change in the status quo has the burden of proof. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The normal standard of proof in an administrative proceeding, unless otherwise stated, is the preponderance of the evidence standard. *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, 1179 n. 14 (Alaska 1986).

³⁶ 20 C.F.R. § 416.920

³⁷ 20 C.F.R. § 416.920(a)(4).

applicant's current work activity. If the applicant is performing "substantial gainful activity," the applicant is not disabled.³⁹ If the applicant is not performing "substantial gainful activity," it is necessary to proceed to step two.

The second step requires the evaluation of the severity and duration of the applicant's impairment. Medical evidence, which consists of "signs, symptoms, and laboratory findings, not only [the applicant's] statement of symptoms," is required to establish an applicant's impairment.⁴⁰ In order to be considered disabled, the impairment or combination of impairments must be severe⁴¹ and must be expected to result in death or must have lasted or be expected to last at least 12 months.⁴² If the impairment is not severe or does not meet the duration requirement, then the applicant is not disabled. If the impairment is severe and meets the duration requirements, then it is necessary to proceed to step three.

The third step requires the evaluation of whether the impairment meets or equals one of the listings adopted by the SSA.⁴³ If it does, the applicant is disabled⁴⁴ and qualifies for Interim Assistance. If the applicant's impairment does not meet or equal one of the SSA listings, the applicant does not qualify for Interim Assistance.⁴⁵

B. Application of the Three-Step Process

The Division agrees that Ms. D is not currently engaged in substantial gainful activity. This means that she satisfies step one of the three step disability process. The Division also agrees that Ms. D's physical impairment and mental impairments, for which she has several diagnoses, are severe. At hearing, the Division's medical reviewer agreed that Ms. D satisfied the duration requirement for her physical impairments, but argued that she did not satisfy the 12-month duration requirement for her mental impairments.

1. Physical Impairments

Ms. D's physical impairments consist of back pain / degenerative disk disease (DJD), asthma, and COPD. In order to satisfy step three, Ms. D must meet or equal the applicable SSA impairment listing.

³⁸ See Commissioner's Decision dated August 20, 2012 in OAH Case No. 12-0688-APA.

³⁹ 20 C.F.R. § 416.920(a)(4)(i).

⁴⁰ 20 C.F.R. § 416.908.

⁴¹ A severe impairment is one that "significantly limits [a person's] physical or mental ability to do basic work activities." 20 C.F.R. § 416.920(c).

⁴² 20 C.F.R. § 416.920(a)(4)(ii); 20 C.F.R. § 416.909.

⁴³ See 20 C.F.R. Pt. 404, Subpart P, Appendix 1 (hereafter "Appendix 1").

⁴⁴ 20 C.F.R. § 416.920(a)(4)(iii) and (d).

⁴⁵ See Commissioner's Decision dated August 20, 2012 in OAH Case No. 12-0688-APA.

Ms. D's DJD falls with the specific listing for disorders of the spine (listing 1.04) and within the general SSA medical listing for musculoskeletal conditions (listing 1.00).⁴⁶ In order for Ms. D to meet or medically equal the criteria set out in the musculoskeletal listing, she must have "an extreme limitation of the ability to walk" or "an extreme loss of function of both upper extremities."⁴⁷

The medical evidence in the record contains recent x rays (February 27, 2012) showing a possible fracture of Ms. D's coccyx and degenerative changes at L2 – 3 and L3 – 4 of her lumbar spine.⁴⁸ Ms. D also has a bone cyst and mild degenerative changes in her left wrist.⁴⁹ Ms. D's "thoracic spine alignment is normal."⁵⁰ Recent emergency room notes state that she experiences back, neck, and lumbosacral pain, but that her range of motion, strength, and gait are normal.⁵¹ There is no medical evidence demonstrating that Ms. D's ability to walk or use both upper extremities is extremely limited. As a result, Ms. D does not meet or equal the SSA listing for musculoskeletal impairments.

The medical evidence in the record also contains diagnoses of hypertension, COPD and asthma. Hypertension by itself does not meet or equal the applicable listing (Cardiovascular system, listing 4.00). There must also be a cardiovascular impairment such as chronic heart failure or vascular dysfunction.⁵² There is no evidence in the record showing any cardiovascular impairment.

COPD and Asthma are both listed under the Respiratory system listing (listing 3.00).⁵³ While Ms. D uses an albuterol inhaler, there is no indication in the medical records that she has frequent attacks requiring medical intervention or that she has spirometry test results that satisfy the standards required to meet or equal the applicable listing. There is also no evidence that Ms. D's asthma and COPD impose any limitations on her. As a result, Ms. D does not meet or equal the SSA listing for respiratory impairments.

Ms. D has the burden of proving, by a preponderance of the evidence, that she is likely to be found disabled by SSA. Because the preponderance of the evidence shows that Ms. D does not

⁴⁶ See 20 C.F.R. § Pt 404, Subpart P, Appendix 1, §§ 1.00 and 1.04.

⁴⁷ 20 C.F.R. § Pt 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1) and 1.00(B)(2)(c).

⁴⁸ Ex. A, p. 67.

⁴⁹ Ex. A, p. 70.

⁵⁰ Ex. A, p. 66.

⁵¹ Ex. 2, p. 23 (March 16, 2012); Ex. 2, p. 27 (February 18, 2012).

⁵² 20 C.F.R. § Pt 404, Subpart P, Appendix 1, § 4.00.

⁵³ 20 C.F.R. § Pt 404, Subpart P, Appendix 1, §§ 3.00, 3.02, 3.03.

satisfy step three of the SSA disability determination process, *i.e.* that she meets or equals the SSA listings with regard to her severe physical impairments, she does not qualify for Interim Assistance benefits based on those impairments.

2. *Mental Impairments*

In addition to her physical impairments, Ms. D has a number of mental health diagnoses, including chronic major depression, bipolar disorder, posttraumatic stress disorder, and polysubstance abuse.

The Division agreed that Ms. D's mental impairments are severe. The Division's medical reviewer questioned, however, whether Ms. D's severe mental impairments met the duration requirement. A review of Ms. D's medical records dating back to September 2010 shows a consistent diagnosis of chronic major depression.⁵⁴ The Division's medical reviewer opined that Ms. D's symptoms might lessen and not be severe impairments for the requisite amount of time if she received ongoing mental health treatment and refrained from substance abuse. However, there is no medical evidence in the record to support that opinion. As a result, the medical evidence shows that Ms. D's severe mental impairments have been ongoing since at least September 2010. Accordingly, they meet the 12 month durational requirement and satisfy step two of the disability determination process.

In order to satisfy step three of the disability determination process, Ms. D must meet or equal the applicable SSA impairment listing. The SSA recognizes (in appendix 1 to subpart P of 20 C.F.R. Part 404) a list of specific impairments that, if met or equaled, are considered disabling.⁵⁵

Ms. Ladner reviewed SSA listing 12.04 (affective disorders), which include both depression and bipolar disorder. Ms. Ladner concluded there was not enough medical evidence in the record to show that Ms. D satisfied SSA listing 12.04.⁵⁶ A review of the underlying evidence supports Ms. Ladner's conclusion.⁵⁷

Listing 12.04 is for Affective Disorders, including depression and bipolar syndrome. For these disorders:

The required level of severity . . . is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

⁵⁴ Ex. 2.100.

⁵⁵ 20 C.F.R. § 416.920(a)(4)(iii).

⁵⁶ Ladner testimony.

⁵⁷ Exs. 2.2 – 2.107; A, pp. 1 – 92; B, pp. 1 – 11, C, pp. 1 – 256.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
- b. Appetite disturbance with change in weight; or
- c. Sleep disturbance; or
- 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

[omitted]

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

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
- 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.^[58]

⁵⁸ 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.04.

The Division argued there was not enough information to demonstrate that Ms. D met the “A” criteria for affective disorders. The Division agreed that Ms. D was impaired as to one of the elements contained in the “B” criteria (concentration, persistence, or pace).

The evidence supports the Division’s conclusion that Ms. D does not satisfy the “A” criteria for affective disorders. There are consistent references in the record to impaired thinking processes and one reference to hallucinations. The most recent evidence consists of a behavioral health assessment, conducted by a master’s level therapist, stating that Ms. D self-reported hallucinations, had poor concentration, impaired abstract thinking, tangential speech, experienced flights of ideas, but had no suicidal or homicidal ideation.⁵⁹ This would only satisfy two of the four necessary elements contained in section 1 of the “A” criteria (difficulty concentrating or thinking and hallucinations, delusions, or paranoid thinking).⁶⁰

Ms. D might potentially satisfy the “A” criteria due to her bipolar diagnosis. However, her bipolar diagnosis is recent, having been made on March 1, 2012.⁶¹ Consequently, there is not enough evidence in the record to demonstrate that she has a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)” as required by the listing.⁶²

The affective disorder listing requires that an applicant satisfy the “A” criteria in order to meet or equal the listing.⁶³ Ms. D, as discussed above, has not shown that she satisfies the “A” criteria. Consequently, her depression and bipolar disorder do not meet or equal the criteria for affective disorders under listing 12.04.

The next diagnosis that must be reviewed is Post Traumatic Stress Disorder (PTSD). SSA classifies PTSD under listing 12.06 (anxiety-related disorders). In order to meet or equal the criteria of listing 12.06, Ms. D must satisfy the following test:

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 both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

⁵⁹ Ex. B, pp. 3 – 11.

⁶⁰ 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.04(A).

⁶¹ Ex. 2.68.

⁶² 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.04(A)(3).

⁶³ 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.04.

- a. Motor tension; or
- b. Autonomic hyperactivity; or
- c. Apprehensive expectation; or
- d. Vigilance and scanning;

or

- 2. 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; or
- 3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
- 4. Recurrent obsessions or compulsions which are a source of marked distress; or
- 5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

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
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration.

OR

C. Resulting in complete inability to function independently outside the area of one's home.^[64]

The record lacks any support for an evidentiary finding that Ms. D satisfies any of the “A” criteria (motor tension, vigilance, scanning, irrational fears, panic attacks, etc.). With regard to the “B” criteria, there is evidence supporting only one factor (impaired concentration). With regard to

⁶⁴ 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.06.

the “C” criteria, there is no evidence that Ms. D cannot function outside of her “home” environment. Consequently, there is insufficient evidence to support a conclusion that Ms. D's PTSD meets or equals the criteria of listing 12.06.

Ms. D also has a diagnosis of polysubstance abuse. This falls under the SSA listing for Substance Addiction Disorders (listing 12.09), which requires evidence of “behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.”⁶⁵ The record lacks evidence showing that Ms. D's polysubstance abuse has caused any behavioral or physical changes. Accordingly, Ms. D does not meet or equal the listing for Substance Addiction Disorders (12.09). Additionally, the mere fact of addiction would not qualify her for Interim Assistance.⁶⁶

Ms. D has the burden of proving, by a preponderance of the evidence, that she is likely to be found disabled by the SSA. Because the preponderance of the evidence shows that Ms. D does not satisfy step three of the SSA disability determination process, *i.e.*, she does not meet or equal the SSA listings with regard to her severe mental impairments, she does not qualify for Interim Assistance benefits based on those impairments.

IV. Conclusion

Ms. D did not meet her burden of proving that she is likely to be found disabled by the Social Security Administration due to either her physical or mental impairments. As a result, the Division’s decision denying Ms. D's application for Interim Assistance is AFFIRMED.

DATED this 21st day of September, 2012.

Signed _____
Jay D. Durych
Administrative Law Judge

⁶⁵ 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.09.

⁶⁶ 7 AAC 40.200(a).

Adoption

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

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

DATED this 2nd day of October, 2012.

By: *Signed*
Name: Jay D. Durych
Title: Administrative Law Judge

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