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

In the Matter of)	
)	
██████████,)	OHA Case No. 09-FH-186
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) applied for Interim Assistance.¹ The Division of Public Assistance (Division) denied the application on March 13, 2009. *Id.* The Claimant requested a fair hearing contesting the denial on March 24, 2009. (Ex. 7)

Pursuant to Claimant's request, a hearing began May 13, 2009. The Claimant was represented by ██████████. The hearing was continued until May 21, 2009 to allow the Division to review new documents provided by the Claimant at the May 21, 2009 hearing. The hearing was continued from May 21, 2009 until July 23, 2009 at the Claimant's request due to witness unavailability and to allow an independent medical exam.² On July 23, 2009, the hearing was continued again until September 24, 2009 at the Claimant's request, due to witness unavailability and to allow the Claimant to receive a psychological evaluation.

¹ The record does not show the exact date of the application. The application was apparently processed in early December 2008, as indicated by a Division casenote dated December 12, 2008, requesting the Claimant to supply medical releases. (Ex. 2)

² The purpose for the independent medical examination was for a psychological evaluation. *See* May 21, 2009 recording.

On September 22, 2009, the Claimant requested yet another continuance. The Claimant's representative, Mr. [REDACTED] stated he was ill with the flu, and that the Claimant had yet to see a psychiatrist. However, the Claimant had been cautioned at the July 23, 2009 hearing that she would not receive any further continuances. The request for a continuance was denied. The hearing proceeded as scheduled on September 24, 2009.

The Claimant and Mr. [REDACTED] appeared in person for the May 13, May 21, and July 23, 2009 hearings. The Claimant and Mr. [REDACTED] appeared telephonically for the September 24, 2009 hearing. Mr. [REDACTED] testified on the Claimant's behalf. The Claimant did not testify.

[REDACTED], a Public Assistance Analyst with the Division, appeared in person at each scheduled hearing. She represented the Division and testified on its behalf. [REDACTED], a registered nurse and medical reviewer for the Division, attended the September 24, 2009 hearing telephonically and testified on behalf of the Division.

All of the exhibits offered by the parties were admitted into evidence with the exception of Exhibit E.³

ISSUE

Was the Division correct to deny the Claimant's application for Interim Assistance benefits because the medical evidence allegedly did not support her disability claim?⁴

FINDINGS OF FACT

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

1. The Claimant is currently [REDACTED] years old (birthdate [REDACTED]). (Ex. 4.2)
2. The Claimant had previously applied for and been found eligible for Interim Assistance benefits in 2004, Fair Hearing Case No. 04-OHA-641. (Ex. J).
3. The Claimant was no longer receiving Interim Assistance benefits and reapplied for those benefits sometime in late 2008.⁵
4. The Division denied the Claimant's application on March 13, 2009. (Ex. 6)

³ Exhibit E is a copy of an undated psychological evaluation of the Claimant conducted by Dr. [REDACTED], Ph.D. The Claimant supplied the exhibit and then requested it be excluded from evidence. The Division did not oppose the Claimant's request, which was then granted.

⁴ The Division originally denied the Claimant's application on the grounds that she had allegedly failed to provide it with properly completed medical information releases. (Exs. 2, 3, and 6) However, at hearing the Claimant submitted additional information, which was used by the Division to evaluate her application.

⁵ The record does not show the exact date of the application. The application was apparently processed in early December 2008, as indicated by a Division casenote dated December 12, 2008, requesting the Claimant to supply medical releases. (Ex. 2)

5. The Division's initial denial was based upon the grounds that the Claimant had allegedly failed to provide it with properly completed medical releases. (Exs. 2, 3, and 6) The Division subsequently reviewed the Claimant's application twice, on May 18, 2009 and on July 21, 2009, and each time denied her application because the Division's medical reviewer concluded the Claimant was capable of engaging "in some type of work activities." (Exs. 18, 19)

6. Dr. [REDACTED], M.D., completed a Preliminary Examination for Interim Assistance form (AD #2) on the Claimant's behalf on September 26, 2008. (Exs. 4.2 – 4.3) That Preliminary Examination form diagnosed the Claimant with Bipolar Affective Disorder and Post Traumatic Stress Disorder. *Id.* It stated that the Claimant was expected to recover from her conditions but the recovery would take 12 months or longer. *Id.* Dr. [REDACTED] stated that if the Claimant could "get medical care then she has proven she can work under those conditions." *Id.*

7. Dr. [REDACTED], M.D., completed a Preliminary Examination for Interim Assistance form (AD #2) on the Claimant's behalf on July 6, 2009. (Ex. A) That Preliminary Examination form diagnosed the Claimant with Bipolar Disorder and Post Traumatic Stress Disorder. *Id.* It stated the Claimant was not expected to recover from her conditions. *Id.* Dr. [REDACTED] noted on the form that he had never met the Claimant before, she was non-compliant, she needed job training and a psychiatric assessment. *Id.* Dr. [REDACTED] further stated he had no idea if the Claimant was disabled, and he would defer to a psychiatrist. *Id.*

8. Dr. [REDACTED] also completed a Chronic and Acute Medical Assistance (CAMA) form for the Claimant on July 6, 2009. (Ex. C) That form diagnosed the Claimant with and certified she needed medical treatment for a "chronic mental illness." *Id.*

9. Ms. [REDACTED] is a registered nurse employed by the Division, who reviews medical information for state Interim Assistance determinations. Ms. [REDACTED] testified about the Claimant's various health conditions. She stated that while the Claimant had medical diagnoses (Bipolar Disorder and Post Traumatic Stress Disorder) that met the durational requirement, there was not sufficient medical evidence in the record to showing the Claimant was severely impaired.

PRINCIPLES OF LAW

This case involves an application for Interim Assistance benefits. When an application is denied, the applicant has the burden of proof⁶ by a preponderance of the evidence.⁷

⁶ "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)

⁷ 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)

Interim Assistance is a benefit provided by the state to Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve their Supplemental Security Income applications. 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 Social Security regulations set out a very specific multistep process 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?⁸ 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. The severity of an applicant's mental impairment is determined by assessing her limitations in each of the following areas: activities of daily living; social functioning; concentration, persistence, or pace; and whether she experiences episodes of decompensation. 20 CFR 416.920a. If an applicant is only mildly limited in her activities of daily living, social functioning, concentration, persistence or pace, and has not experienced any decompensation episodes, then she is not severely impaired. 20 CFR 416.920a(d)(1).

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. 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 her from doing her previous relevant work? This involves an evaluation of the applicant's residual functional capacity. If the applicant is not

⁸ The cases that appear in front of this office usually do not require resolution of this issue; our inquiry process begins with question No. 2.

prevented from performing her 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, she is disabled. 20 CFR 416.920(a)(4)(v).

In determining whether a person can perform other work, the Social Security regulations define the characteristics of different levels of work:

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities.

20 CFR 416.967(b).

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 CFR 416.967(a).

ANALYSIS

It is necessary to review the evidence in this case and decide, using the above multistep Social Security disability analysis, if the Claimant's impairments satisfy the Social Security disability criteria. If they do, the Claimant is disabled by Social Security standards and eligible for Alaska Interim Assistance benefits. If they do not, the Claimant is not disabled by Social Security standards and not eligible for Interim Assistance benefits.

Because this case involves the Claimant's application for Interim Assistance benefits, she has the burden of proof by a preponderance of the evidence.

The undisputed evidence shows that the Claimant experiences two mental health conditions, Bipolar Affective Disorder, and Post Traumatic Stress Disorder. However, the Claimant's evidentiary record is exceedingly limited. The only current medical evidence contained in the record consists of the Preliminary Examination forms completed by Drs. [REDACTED] and [REDACTED], and the CAMA form completed by Dr. [REDACTED]. There is no evidence in the record regarding the Claimant's work history, or how her

mental health conditions affect her ability to work other than Dr. [REDACTED]'s statement that if she could get treatment, she could work. *See* Finding of Fact 6.

A. Current Employment.

There is no evidence in the record regarding whether the Claimant is currently employed. However, because the Division did not object to the Claimant's application on the basis that she was employed, this Decision assumes the Claimant is not employed. She therefore satisfies the first step of the disability analysis process.

B. Severe Impairment.

The Division's medical reviewer stated there was not sufficient medical evidence to show the Claimant was severely impaired. A review of the limited evidence in this case supports the medical reviewer's opinion.

Although the Claimant unquestionably experiences mental illness, the only current medical evidence in the record does not contain any information regarding whether she is limited in her activities of daily living, social functioning, concentration, persistence, or pace, or experiences episodes of decompensation. In order to be severely impaired, as required by the Social Security disability evaluation process, the Claimant must establish that she is more than mildly limited in her activities of daily living, social functioning, concentration, persistence, or pace, or has experienced episodes of decompensation. *See* 20 CFR 416.920a.

The Claimant has the burden of proof by a preponderance of the evidence. Because she has not supplied medical evidence showing that she is limited in her activities of daily living, social functioning, concentration, persistence, or pace, or experiences decompensation episodes, she has not met her burden of proof to establish that her mental illnesses are severe impairments.

Because the Claimant has not established that her mental illnesses are a severe impairment, she is not disabled according to the Social Security criteria. Because the Claimant has not satisfied the severe impairment test, it is not necessary to address the remaining steps of the Social Security disability analysis process.

The Claimant has therefore not met her burden of proof by a preponderance of the evidence. She has not established that she is disabled according to the Social Security criteria. The Division was therefore correct when it denied her application for Interim Assistance benefits.

CONCLUSIONS OF LAW

1. The Claimant experiences two mental impairments, Bipolar Affective Disorder and Post Traumatic Stress Disorder. However, there is insufficient medical evidence in the record to establish that her mental impairments are severe, as required by the Social Security disability analysis process adopted by the Alaska Interim Assistance regulations.

