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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-321
)	
Claimant.)	Division Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) applied for Interim Assistance on March 16, 2009. (Ex. 4) The Division of Public Assistance (Division) denied the application on May 1, 2009. *Id.* The Claimant requested a fair hearing contesting the denial on May 6, 2008. (Ex. 5)

Pursuant to Claimant's request, a hearing was held on July 2, 2009. The Claimant appeared telephonically, represented herself and testified on her own behalf. ██████████, Public Assistance Analyst with the Division, attended in person and represented the Division. ██████████, a registered nurse with the Division, attended telephonically and testified on behalf of the Division on June 26, 2008.

The record was held open until July 31, 2009 for the parties to submit additional documentation.¹

ISSUE

Was the Division correct to deny the Claimant's March 16, 2009 request for Interim Assistance benefits because the medical evidence allegedly did not support her disability claim?

¹ The Claimant's documentation was marked as Exhibit A. The Division's documentation was marked as Exhibit 19.

FINDINGS OF FACT

1. The Claimant is currently [REDACTED] years old (birthdate [REDACTED]). (Ex. 1) She has a high school diploma and several years of college education. (Ex. A, p. 14)
2. The majority of Claimant's work experience consists of clerical and office work. (Ex. A, pp. 9 - 17) The last time she worked in an office was July 2003. (Ex. A, p. 18) The last time the Claimant worked was in 2004, when she did limited drywall work. (Claimant testimony)
3. The Claimant had cardiac surgery in 2005, and radiofrequency ablation to her thoracic facets to reduce her chronic back pain in 2005. (Ex. 2, pp. 92 – 94)
4. Dr. [REDACTED], M.D., completed two Preliminary Examination for Interim Assistance Forms (AD #2) on the Claimant's behalf:
 - a. The first Preliminary Examination form, dated November 19, 2007, diagnosed the Claimant with Fibromyalgia, severe anxiety, and depression. (Ex. 2, pp. 5 – 6) The November 19, 2007 Preliminary Examination form indicates that the Claimant is expected to recover from these conditions, but that her recovery time was expected to take 12 months or longer. *Id.*
 - b. The second Preliminary Examination form, dated April 7, 2009, diagnosed the Claimant with Fibromyalgia, chronic fatigue and pain, depression and anxiety. (Ex. 2, pp. 3 – 4) The April 7, 2009 Preliminary Examination form indicates that the Claimant is expected to recover from these conditions, but that her recovery time was expected to take 12 months or longer. *Id.*
5. Dr. [REDACTED] medical reports from February 2007 forward indicate the following:
 - a. From February 19, 2007 through January 15, 2009, the Claimant was continuously diagnosed with fibromyalgia, chronic back pain, fatigue, and anxiety, including sleeplessness. (February 19, 2007, Ex. 2, p. 97; March 8, 2007, Ex. 2, p. 95; March 15, 2007, Ex. 2, p. 94; May 11, 2007; Ex. 2, p. 93; June 7, 2007, Ex. 2, p. 92; June 22, 2007, Ex. 2, p. 91; July 5, 2007, Ex. 2, p. 90; July 12, 2007, Ex. 2, p. 89; August 1, 2007, Ex. 2, p. 88; August 22, 2007, Ex. 2, p. 86; August 29, 2007, Ex. 2, p. 85; September 15, 2007, Ex. 2, p. 84; September 25, 2007, Ex. 2, p. 83; November 19, 2007, Ex. 2, p. 81; January 17, 2008, Ex. 2, p. 66; February 18, 2008, Ex. 2, p. 67; March 14, 2008, Ex. 2, p. 68; April 3, 2008, Ex. 2, p. 69; May 9, 2008, Ex. 2, p. 70; June 16, 2008, Ex. 2, p. 71; July 14, 2008, Ex. 2, p. 72; August 5, 2008, Ex. 2, p. 73; August 19, 2008, Ex. 2, p. 74; September 11, 2008, Ex. 2, p. 75; October 8, 2008, Ex. 2, p. 76; December 2, 2008, Ex. 2, p. 78; December 17, 2008, Ex. 2, p. 79; January 15, 2009, Ex. 2, p. 80)

- b. During the time period from February 18, 2007 through January 15, 2009, the Claimant was continually prescribed pain medications (Vicodin, Percocet, Methadone, and at one point Fentanyl), and Xanax for anxiety. *Id.*
 - c. During the time period from February 18, 2007 through January 15, 2009, the Claimant has had a normal balance and gait, but has been tender to palpations along her spine. *Id.*
6. Dr. ██████'s medical reports from February 2007 forward do not indicate any range of motion limitations or any restrictions on her ability to complete physical tasks. *Id.*
7. Beginning in October 2008, the Claimant's depressive symptoms worsened, which included her experiencing thoughts of suicide. (Ex. 2, p. 76)
8. The Claimant then went through detoxification in late January 2009. (Ex. 2, p. 13) Following her detoxification, she was admitted to the mental health unit at Providence. *Id.* The Claimant was disheveled, tearful, had a flat affect, expressed suicidal ideation, but did not have any psychotic symptoms. *Id.* She was diagnosed with major depressive disorder at the time of her admission. *Id.* She had a 50 pound weight loss in the five month period preceding her admission. (Ex. 2, p. 18)
9. The Claimant was released from the Providence mental health unit on February 13, 2009. (Ex. 2, p. 20) Her psychiatric diagnosis was Major depressive disorder, recurrent and severe. *Id.* She had an additional psychiatric diagnosis of Anxiety disorder, not otherwise specified, with generalized anxiety and panic disorder. *Id.*
10. Dr. ██████ examined the Claimant on February 17, 2009, shortly after her release from Providence. (Ex. 2, p. 65) He stated that after her detoxification, "[s]he now has less pain than she did on all the opiates and is pleasantly surprised." *Id.* He found that she had "some mild low back tenderness" and "[g]rossly normal balance and stride." *Id.* He diagnosed her with Fibromyalgia and chronic back pain with depression. *Id.* She was still experiencing trouble sleeping. *Id.* The examination notes do not show any functional limitations. *Id.*
11. The Claimant testified on her own behalf as follows:
 - a. Her mental status has improved since she left Providence. She does not avoid people anymore and has more of a social life. She does not have any more suicidal thoughts.
 - b. Some days she can walk 6 blocks. On other days, she can barely walk at all.
 - c. She can barely stand for a half hour due to severe back pain.
 - d. She can only sit for about a half hour.
 - e. After sitting for a half hour, she needs to move around for approximately 10 minutes.
 - f. After typing for a half hour, her hands shake and her back starts hurting.

- g. She cannot lift much more than a gallon of milk.
- h. She wakes up about 6 a.m. every morning due to pain. Every afternoon about 2 p.m. she has to lie down and falls asleep for about an hour. About 7 p.m. every night, she becomes very fatigued.
- i. She is often disoriented with memory problems. It depends upon how tired she is and her level of pain.
- j. She needs help with most household chores.

14. 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 the Claimant was not severely impaired. She argued the Claimant's Fibromyalgia diagnosis was not valid because it was not made by a rheumatologist. She said the Claimant's conditions did not meet or equal the Social Security disability listings of impairments. She opined the Claimant could perform simple repetitive sedentary tasks.

PRINCIPLES OF LAW

This case involves an application for Interim Assistance benefits. When an application is denied, the applicant has the burden of proof² by a preponderance of the evidence.³

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 the Supplemental Security Income application. 7 AAC 40.170(a) and (b); AS 47.25.255.

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

² "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)

³ 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)

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

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

3. 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 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

⁴ 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.

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 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 Interim Assistance benefits. If they do not, the Claimant is not disabled by Social Security standards and not eligible for Interim Assistance benefits.

The Preliminary Examination forms completed by Dr. [REDACTED] diagnoses the Claimant with Fibromyalgia, chronic fatigue and pain, depression and anxiety. The medical documents in the record corroborate these diagnoses. *See* Findings of Fact 5, 9, and 10 above.

A. Current Employment.

The last time the Claimant worked was in 2004, i.e. she is currently unemployed. *See* Finding of Fact 2 above. She therefore satisfies the first step of the Social Security disability analysis. It is therefore necessary to proceed to the next step, whether she is severely impaired.

B. Severe Impairment.

The Division's medical reviewer stated the Claimant was not severely impaired. However, she later testified the Claimant could perform simple repetitive sedentary tasks. This later statement was an implicit acknowledgement that the Claimant could not perform a full range of work activities. This later statement also satisfied the Social Security definition of a severe impairment, being one that "significantly limits [a person's] physical or mental ability to do basic work activities." 20 CFR 416.920(c). The Claimant is therefore severely impaired due to her medical and psychiatric⁵ conditions. It is necessary to proceed to the next step in the Social Security disability analysis.

⁵ As the discussion under section D "Meeting of Equaling the Social Security Impairment Listings" below shows, it is arguable whether the Claimant's depression and anxiety are currently medically "severe." However, for the purposes of this discussion, it is assumed that they are "severe."

C. Duration.

The next step is to decide whether or not the Claimant's severe impairment has lasted or can be expected to last for a continuous period of at least 12 months. The medical evidence in the record shows that the Claimant has been diagnosed with Fibromyalgia, chronic fatigue, pain, depression and anxiety since February 2007. She satisfies the durational requirement.

D. Meeting or Equaling the Social Security Impairment Listings.

The next step is to decide whether or not the Claimant's severe impairments meet or medically equal the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1.

1. Fibromyalgia and Chronic Fatigue.

It should first be noted that the Claimant has a medical diagnosis of Fibromyalgia.⁶ Despite the fact that no evidence has been presented that Dr. [REDACTED] is a rheumatologist,⁷ he is the Claimant's treating physician and has been diagnosing her with Fibromyalgia since February 2007. Accordingly, his diagnosis is accepted as valid.

Fibromyalgia is not explicitly listed in the Social Security listing of impairments. It is therefore not possible to address this in terms of whether it meets or equals a listing.

Similarly, although there is medical reference to the Claimant's chronic fatigue, it is not explicitly listed in the Social Security listing of impairments. It is therefore not possible to address this in terms of whether it meets or equals a listing.

2. Chronic Pain

The Claimant's chronic pain, other than fibromyalgia, is related to her medically documented back problems. The Social Security system classifies this under the musculoskeletal category. In order for the Claimant 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." 20 CFR Pt 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1) and 1.00(B)(2)(c). The medical evidence regarding the Claimant's ability to walk states she has a normal balance and gait. *See* Findings of Fact 5(c) and 10 above.

⁶ "Fibromyalgia is a chronic condition characterized by widespread pain in your muscles, ligaments and tendons, as well as fatigue and multiple tender points." <http://www.mayoclinic.com/health/fibromyalgia/DS00079>

⁷ The Division's medical reviewer has expressed her opinion that only a rheumatologist may make a medical diagnosis of Fibromyalgia. She relies upon the federal court case of *Sarchet v. Chater*, 78 F.3d 305, 307 (7th Cir. 1996) This is a misunderstanding of the decision. *Sarchet* stands for the proposition that a rheumatologist is the "relevant specialist" for making a Fibromyalgia diagnosis; it, however, does not state that only a rheumatologist may make a Fibromyalgia diagnosis.

The Claimant's testimony was that she some days she could walk for 6 blocks, and other days, she could not walk any distance at all. Medical evidence is required to establish an applicant's impairment. 20 CFR 416.908. The Claimant's testimony is not medical evidence establishing that she has "an extreme limitation of the ability to walk." Similarly, there is no medical evidence establishing that she has "an extreme loss of function of both upper extremities." Because the Claimant has not established either an extreme loss of function on both upper extremities (right and left arm) or "an extreme limitation of the ability to walk," she does not meet or medically equal the Social Security listing of impairments for the musculoskeletal category.

3. Depression and Anxiety

Depression and anxiety are classified under mental disorders, specifically affective disorders. 20 CFR Pat 404, Subpart P, Appendix 1, §12.04. In order to meet or medically equal the Social Security listing for affective disorders, the Claimant must satisfy the requirements of 20 CFR Pat 404, Subpart P, Appendix 1, §12.04, subsections A and B or subsection C.

Subsection A requires, for a depressive disorder, the Claimant have at least four of the following medically documented symptoms:

- 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.

In order to meet the requirement of subsection A, the Claimant must experience at least four of the above listed symptoms.

A review of the medical evidence indicates the Claimant may well have satisfied the requirements of subsection A before her February 2009 hospitalization at Providence (i.e. sleep disturbance, weight change, suicidal ideation, decreased energy). However, the only medical evidence regarding her psychiatric condition after her February 2009 hospitalization, is that her condition has improved, and

the only noted psychiatric symptom is sleeplessness. *See* Find of Fact 10 above. The Claimant therefore does not satisfy the requirements of subsection A.

If the Claimant does not satisfy the requirements of subsection A, she must have experienced one of the following to meet or medically equal the Social Security listing under subsection C: repeated episodes of decompensation, 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 a current history of 1 or more years of inability to function outside a highly supportive living arrangement. 20 CFR Pat 404, Subpart P, Appendix 1, §12.04(C). Her medical records do not show any of these factors to be present in her case.

In summary, because none of the Claimant's impairments, Fibromyalgia, Chronic pain and fatigue, depression and anxiety, meet or medically equal the Social Security listing of impairments, as discussed above, it is necessary to proceed to the next question in the Social Security disability analysis: whether or not the Claimant's severe impairments prevents her from doing her previous relevant work.

E. Previous Relevant Work.

The majority of the Claimant's previous relevant work was clerical in nature. She worked in offices until 2003. Her last job, in 2004, was a drywall installation project. Because this was not representative of her work experience, and only performed for a short period of time after she stopped clerical work, her clerical and office work is her relevant work experience.

The Division's medical reviewer stated the Claimant could perform sedentary work. Sedentary work involves mainly sitting, occasionally lifting or carrying articles like docket files, ledgers, and small tools, with occasional walking and standing, and lifting up to 10 pounds. *See* 20 CFR 416.967(a). This is clerical and office work.

The Claimant's testimony regarding her physical limitations (pain, inability to sit or stand or type for more than a half hour and that she could not even lift a gallon of milk) is not supported by the medical evidence. The only medical evidence regarding the Claimant's limitations shows that the Claimant has a normal balance and gait (i.e. she can walk), and her most recent medical examination records from February 17, 2009 show that she has mild, not marked, tenderness on her spine. *See* Finding of Fact 10 above. As noted in the February 17, 2009 medical examination records, her level of pain has decreased. *Id.* Additionally, there is no medical evidence showing any range of motion limitation, or weight limitations, or limitations of standing, walking, bending whatsoever as of the time of her March 16, 2009 Interim Assistance application.

The Claimant also testified regarding her continual state of fatigue. However, this is not supported by current medical evidence, and her testimony is given little weight. In other words, there is no medical evidence showing that her ability to perform her previous office and clerical work is limited by her fatigue.

The medical evidence in this case supports a conclusion that the Claimant can perform her previous relevant work, which is office and clerical work. Because the Claimant can perform her previous relevant work, she is not disabled according to the Social Security Criteria.

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 Social Security criteria. The Division was therefore correct when it denied her March 16, 2009 application for Interim Assistance benefits.

CONCLUSIONS OF LAW

1. The Claimant experiences severe impairments, Fibromyalgia, Chronic pain and fatigue, depression and anxiety, which have lasted or can be expected to last for 12 months or longer, that qualifies her as severely impaired according to the Social Security disability regulations.
2. The Claimant's severe impairments do not meet or medically equal the Social Security listings of impairments.
3. The Claimant is capable of performing her previous relevant work, being clerical and office work.
4. Because the Claimant is capable of performing her previous relevant work, she had not met her burden of proof by a preponderance of the evidence to establish that she is disabled according to Social Security disability rules.
5. The Division was therefore correct when it denied the Claimant's March 16, 2009 request for Interim Assistance benefits.

DECISION

The Division was correct when it denied the Claimant's March 16, 2009 application for Interim Assistance benefits.

APPEAL RIGHTS

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

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

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

