



psychiatrist Scott Terranella, M.D.<sup>7</sup> That form stated his diagnoses were schizoaffective disorder and borderline personality disorder. The form further stated that he not expected to recover from those conditions, and that he was “currently very symptomatic with a lot of fear & paranoia, which interferes with his day-to-day functioning.”<sup>8</sup>

Laura Ladner, the Division’s medical reviewer, determined that Mr. E’s application should be denied because there was insufficient medical evidence to “evaluate the severity of your condition and assess any limitations you have as a result of your impairment.”<sup>9</sup> The Division then denied his application in writing on April 25, 2012.<sup>10</sup>

Mr. E requested a hearing challenging the denial of his Interim Assistance application. His hearing was scheduled for May 29, 2012. He submitted additional medical evidence to the Division on May 16, 2012.<sup>11</sup>

Mr. E is 29 years old.<sup>12</sup> He was withdrawn at the hearing, had difficulty making eye contact, and also had difficulty answering questions. He is literate in English. He has a ninth grade education; he does not have a GED. His work history consists of unskilled physical work, day labor, grocery store produce clerk and stocker jobs.<sup>13</sup> He is not working and has not worked since 2010.<sup>14</sup>

Mr. E is being treated at No Name Community Mental Health Services (NNCMHS). His medical records from NNCMHS show the following:

- a. He had a diagnosis of Bipolar Disorder as of November 2009.<sup>15</sup> That diagnosis changed to Schizoaffective Disorder in April 2011.<sup>16</sup>
- b. He was psychiatrically hospitalized in either 2008 or 2009.<sup>17</sup>
- c. He has a history of marijuana use.<sup>18</sup> His doctor’s notes for December 14, 2010 contain a diagnosis of polysubstance dependence for “cannabis abuse, crystal meth.”<sup>19</sup> His doctor’s notes for

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<sup>7</sup> Exs. 3.3 – 3.4.

<sup>8</sup> Ex. 3.4.

<sup>9</sup> Ex. 3.1.

<sup>10</sup> Ex. 5.

<sup>11</sup> Ex. A, pp. 1 – 66.

<sup>12</sup> Ex. 1.

<sup>13</sup> Exs. 3.8 – 3.12; E testimony.

<sup>14</sup> E testimony.

<sup>15</sup> Ex. A, p. 33.

<sup>16</sup> Ex. A, p. 22.

<sup>17</sup> Ex. A, p. 33.

<sup>18</sup> See e.g., Ex. A, pp. 23, 26.

<sup>19</sup> Ex. A, p. 25.

visits after that date continue to contain a polysubstance dependence diagnosis, but only reference marijuana dependence thereafter.<sup>20</sup> His last marijuana use was in 2011.<sup>21</sup>

d. He also has a diagnosis of borderline personality disorder, which dates back to August 2011.<sup>22</sup>

e. He had been taking medications previously, had some difficulties with them, and stopped taking them.<sup>23</sup> As of March 19, 2012, he was not taking any psychiatric medications. He was then started on Latuda.<sup>24</sup>

Mr. E's caseworker's notes from NNCMHS show that he has continual issues with obtaining food, which include repeated instruction on how to access food banks.<sup>25</sup>

Ms. Ladner is the Division's medical reviewer. Her credentials include a bachelor's degree in psychology and 10 years of experience working for the state agency that performs disability evaluations for Social Security.<sup>26</sup> She testified regarding whether Mr. E met the Interim Assistance disability requirements, in pertinent part, as follows:

a. She assumed that Mr. E was not working.

b. His mental impairment is severe and it meets the duration requirement.

c. Mr. E does not meet or equal the Social Security listings for his mental impairment. His mental impairment is not classified under § 12.03, Schizophrenic, Paranoid and Other Psychotic Disorders. His mental impairment is instead classified under §12.04, affective disorders. He satisfies the "A" criteria for that listing, due to a number of factors (sleep disturbance, decrease in energy, difficulty in concentration, suicidal ideation, hallucinations, paranoia). However, he does not satisfy the "B" criteria because he is only moderately limited in the three factors of activities of daily living, social functioning, and persistence, pace, and concentration. His only episode of decompensation occurred in 2009, so he does not satisfy that factor of the "B" criteria.

d. She also reviewed the Social Security listing for personality disorders, § 12.08. As with the listing for § 12.03, she found Mr. E satisfied the "A" criteria, but not the "B" criteria.

e. She thought that Mr. E's marijuana use and his non-compliance with prescribed medications might influence his "B" criteria factors of activities of daily living, social functioning, and

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<sup>20</sup> Ex. A, pp. 2, 4, 6, 8, 10, 12, 14, 16, 17, 20, 22- 23. (Dates January 18, 2011 – March 26, 2012).

<sup>21</sup> Ex. A, p. 6.

<sup>22</sup> Ex. A, p. 20.

<sup>23</sup> See e.g., Ex. A, pp. 9, 18, 21, 24.

<sup>24</sup> Ex. A. pp. 6 – 7.

<sup>25</sup> See e.g., Ex. A, pp. 37, 38, 45, 51, 54 (time frame from January 17, 2012 through May 4, 2012).

<sup>26</sup> Ladner testimony.

persistence, pace, and concentration. However, his impairment would still be severe and he would still have problems with his persistence, pace, and concentration even if he was not using marijuana and was compliant with his medications.

f. Mr. E is not capable of performing his previous relevant work. He requires a supportive work environment where he does not have to work with the public. He also may need a work environment without coworkers. He, however, is capable of unskilled or simple repetitive tasks. Because he does not have physical limitations, three jobs he could perform are a baker's helper, crate opener (such as in a furniture business), or a dairy helper.

Mr. E testified as follows:

a. He lives in an apartment which is supplied by an agency.

b. He has not used crystal meth since 2009. He has not used marijuana since October 25, 2011.

c. Since he quit drugs, he is alone all the time. He does not have any friends. His hallucinations are his friends. He does have stepbrothers who he sees occasionally.

d. He has a very difficult time being around other people. He cannot study or think when other people are around. He recently took a test for a food handler's permit and had to be placed in a room by himself in order to take the test.

e. He runs out of food all of the time. He does his own shopping for food when he has food stamps, but he is not good at shopping. He goes to the food bank for food.

f. He has tried to commit suicide on multiple occasions. The most recent attempt was several weeks before the hearing. It was caused by him feeling totally alone.

### **III. Discussion**

#### **A. Introduction**

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”<sup>27</sup> Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income benefits.<sup>28</sup> Once an applicant is approved for federal Supplemental Security Benefits, he or she is then eligible to receive Adult Public Assistance benefits.<sup>29</sup>

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<sup>27</sup> AS 47.25.430.

<sup>28</sup> 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).

<sup>29</sup> 7 AAC 40.030(a); 7 AAC 40.170(a).

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.<sup>30</sup>

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”<sup>31</sup> An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.<sup>32</sup>

The SSA uses a five-step evaluation process in making its disability determinations.<sup>33</sup> 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.<sup>34</sup> The first step in this process looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the SSA will find the applicant is not disabled.<sup>35</sup>

At step two, the SSA considers 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.<sup>36</sup> In order to be considered disabled, the impairment or combination of impairments must be severe<sup>37</sup> and must be expected to result in death or must have lasted or be expected to last at least 12 months.<sup>38</sup> If the impairment is not severe or does not meet the duration requirement, then the applicant is not disabled.

At step three, the SSA looks at whether the impairment meets or equals one of the listings adopted by the SSA.<sup>39</sup> If it does, the applicant is disabled and the SSA does not look at steps four and five.<sup>40</sup>

At step four, which applies to applicants determined not to be disabled at step three, the SSA looks at the applicant’s capacity for work and past relevant work. If the applicant is able to perform

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<sup>30</sup> 7 AAC 40.170(a) and (b); AS 47.25.455.

<sup>31</sup> 7 AAC 40.180(b)(1).

<sup>32</sup> 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).

<sup>33</sup> 20 C.F.R. § 416.920

<sup>34</sup> 20 C.F.R. § 416.920(a)(4).

<sup>35</sup> 20 C.F.R. § 416.920(a)(4)(i).

<sup>36</sup> 20 C.F.R. § 416.908.

<sup>37</sup> 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).

<sup>38</sup> 20 C.F.R. § 416.920(a)(4)(ii); 20 C.F.R. § 416.909.

<sup>39</sup> See 20 C.F.R.Pt. 404, Subpart P, Appendix 1 (hereafter “Appendix 1”).

<sup>40</sup> 20 C.F.R. § 416.920(a)(4)(iii) and (d).

his or her past relevant work, the applicant is not disabled.<sup>41</sup> If the applicant is unable to perform his or her past relevant work, it is necessary to proceed to step five.

Step five requires an answer to the question of whether the applicant is 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.<sup>42</sup> If the applicant is not capable of performing other work, he or she is disabled.<sup>43</sup>

***B. Application of the Five Step Process***

The Division agrees that Mr. E is not currently engaged in substantial gainful activity. This means that he satisfies step one of the five step disability process. The Division also agrees that his mental impairment is severe and that he meets the duration requirement. This satisfies step two of the five step disability process.

In order to satisfy step three, Mr. E must meet or equal the SSA medical listings. 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.<sup>44</sup> Listing 12.04 is for Affective Disorders. 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.

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

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<sup>41</sup> 20 C.F.R. § 416.920(a)(4)(iv).

<sup>42</sup> See 20 C.F.R. Pt. 404, Subpt. P, App. 2, § 201.

<sup>43</sup> 20 C.F.R. § 416.920(a)(4)(v).

<sup>44</sup> 20 CFR § 416.920(a)(4)(iii).

i. Hallucinations, delusions, or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

[omitted]

or

3. Bipolar syndrome [criteria omitted];

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.<sup>[45]</sup>

The Division conceded that Mr. E met the “A” criteria. However, the Division argued that he did not meet the “B” criteria because he was only moderately affected in his activities of daily living, social functioning, and concentration, persistence, or pace, whereas the “B” criteria require that these activities be markedly affected. The Division also argued that Mr. E’s marijuana use and lack of compliance with his medications affected the severity of his “B” criteria.

The Division’s arguments are unpersuasive. First, there is no evidence in the record showing that Mr. E’s previous marijuana use<sup>46</sup> or previous medication non-compliance<sup>47</sup> affect his current level of functioning. The Division’s argument on this point is purely speculative.

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<sup>45</sup> 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.04.

<sup>46</sup> The only evidence in the record regarding the last time Mr. E used marijuana is his own testimony that his last use was on October 25, 2011, and his doctor’s notes stating Mr. E’s last use was in 2011. *See* Ex. A, p. 6.

<sup>47</sup> The evidence in the record shows that he has been taking Latuda since March 19, 2012. *See* Ex. A, pp. 6 – 7.

Second, the evidence shows that it is more likely than not that Mr. E is markedly affected in his activities of daily living, social functioning, and concentration, persistence, or pace. A “marked” restriction or difficulty exists when there is a serious interference with the ability to function.<sup>48</sup> He meets this standard as follows:

1. He is markedly restricted in his activities of daily living, as shown by the fact that he continues to require assistance in obtaining food, a basic need, despite receiving Food Stamp benefits and receiving repeated instruction on how to access food banks.<sup>49</sup>

2. He has marked difficulties in maintaining social functioning, as shown by the fact that he has no friends. In fact, he testified that his hallucinations were his friends.

3. He has marked difficulties in maintaining concentration, persistence, or pace as shown by his testimony that he cannot concentrate, study, or think when other people are around. He recently took a test for a food handler’s permit and had to be placed in a room by himself in order to take the test.

Mr. E therefore demonstrated that he is “markedly” affected in three categories of the “B” criteria of the Affective Disorders listing: activities of daily living, social functioning, and concentration, persistence, or pace. In order to satisfy the “B” criteria, he only needs to satisfy two of the four categories, *i.e.* he meets the “B” criteria.

Because Mr. E meets the “A” criteria, as conceded by the Division, for the Affective Disorders listing, and because, as shown above, he also meets the “B” criteria, he meets or equals the Social Security disability listing for Affective Disorders. As a result, he satisfies step three of the Social Security five step disability evaluation process and is “likely to be found disabled by the Social Security Administration”<sup>50</sup> and it is not necessary to proceed to steps four or five in the Social Security five step disability evaluation process.

#### **IV. Conclusion**

Mr. E has met his burden of proving that he is likely to meet the Social Security Administration’s criteria for disability. Accordingly, Mr. E is entitled to receive Interim

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<sup>48</sup> 20 C.F.R. Pt. 404, Subpart P, Appendix 1, § 12.00(C).

<sup>49</sup> See *e.g.*, Ex. A, pp. 37, 38, 45, 51, 54 (time frame from January 17, 2012 through May 4, 2012).

<sup>50</sup> 7 AAC 40.180(b)(1).

Assistance. The Division's decision to deny his application for Interim Assistance benefits is REVERSED.

DATED this 20<sup>th</sup> day of July, 2012.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

### **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 31<sup>st</sup> day of July, 2012.

By: *Signed* \_\_\_\_\_  
Name: Lawrence A. Pederson  
Title: Administrative Law Judge

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