

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Phone: (907) 334-2239
Fax: (907) 334-2285

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

In the Matter of:)
)
 [REDACTED],) OHA Case No. 09-FH-524
)
 Claimant.) DPA Case No. [REDACTED]
 _____)

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) applied for Interim Assistance on July 17, 2009 (Ex. 1). The Division of Public Assistance (DPA or Division) denied her application on August 25, 2009 (Ex. 3). The Claimant requested a fair hearing contesting the denial on September 11, 2009 (Ex. 4.1).

This Office has jurisdiction to decide this case pursuant to 7 AAC 49.010.

Hearings were held on November 24, 2009 and January 13, 2010 before Hearing Officer Jay Durych. The Claimant participated by telephone in each hearing, represented herself, and testified on her own behalf. Public Assistance Analyst [REDACTED] appeared in person at each hearing to represent and testify on behalf of the Division. [REDACTED], another Public Assistance Analyst employed by the Division, observed the first hearing but did not testify. [REDACTED], a friend of the Claimant, participated briefly in the first hearing but did not represent the Claimant or present sworn testimony.

All testimony and exhibits submitted by the parties were admitted into evidence. At the end of the second hearing the record was closed and the case was submitted for decision.

ISSUE

Was the Division correct to deny the Claimant's application for Interim Assistance Benefits on August 25, 2009 based on the assertion that the Claimant did not meet the Interim Assistance Program's disability requirements?¹

¹ See denial notice dated August 25, 2009 (Ex. 3).

FINDINGS OF FACT ²

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

I. Educational and Vocational History.

1. The Claimant was born on [REDACTED], [REDACTED] (Ex. 2.0235) and was [REDACTED] years old at the time of the hearings held in this case (Claimant hearing testimony). She has a Graduation Equivalency Diploma (GED). *Id.* She can speak, understand, read, and write the English language. *Id.*

2. The Claimant worked at various fast food restaurants from her early teens through age 23 (Claimant testimony). She worked as a Certified Nursing Assistant for approximately 2 years. *Id.* She has worked as a liquor store clerk and a bartender. *Id.* She worked as a cook for approximately 10 years. *Id.* She has worked as a deck hand on a commercial fishing vessel for the last eight (8) years. *Id.* The Claimant's most recent work as a deck hand was heavy physical work. *Id.* The Claimant can no longer perform that work because of a knee problem. *Id.* She is not currently working. *Id.* She is currently homeless. *Id.*

II. Mental Impairments.

3. The Claimant asserts a psychological impairment in this case (Claimant testimony). As indicated below, the Claimant's psychological impairment has been classified differently by various physicians at various times. However, the Claimant's psychological impairment may fairly be characterized as consisting of depression and bipolar disorder (both categorized under Social Security Administration (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).

4. The Claimant has suffered from alcohol abuse problems since her teenage years (Claimant testimony; *see also* Exs. 2.0066, 2.0067, 2.0069, 2.0110, 2.0128, 2.0130, 2.0132, and 2.0214). However, as of the date of the second hearing (January 13, 2010), she had been sober for 60 consecutive days. *Id.*

5. The Claimant has only been formally diagnosed with her mental health problems for about the last 2.5 years (Claimant testimony). However, she has suffered from mental health problems for the last 15 years. *Id.*

6. The Claimant has repeated memories of unpleasant past occurrences (Claimant testimony). These are triggered by particular people or places. *Id.* She testified that she has these almost every day. *Id.* When these flashbacks occur she gets very hyperactive, nervous, and aggressive. *Id.*

² All of the medical reports in the record (approximately 268 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.

7. The Claimant has had panic attacks since she last worked at a local restaurant about two years ago (Claimant testimony). She currently has panic attacks approximately 3-4 times per week. *Id.* During these attacks her muscles tense up and she may become sweaty, clumsy, and hyperactive. *Id.* When she has one of these attacks she feels overwhelmed and embarrassed, and just wants to get away from other people and be alone. *Id.*

8. The Claimant sometimes finds it difficult to leave the house because of her panic attacks and associated anxiety (Claimant testimony). When she does leave the house, she sometimes has panic attacks while walking down the street and while shopping at stores. *Id.* When she has an attack while shopping, she sometimes must abandon her shopping cart or basket and leave the store. *Id.*

9. The Claimant testified that she has problems maintaining her concentration, is sometimes paranoid, has a fear of people, and therefore has difficulties dealing with the public (Claimant testimony). She sometimes also has anger management problems or rages. *Id.*

10. The Claimant testified that she has periods when she just cannot cope with life, feels suicidal, and withdraws from all outside contact (Claimant testimony). She had these periods 3-4 times during the month prior to the hearing. *Id.*

11. The Claimant has taken several medications to combat anxiety over the last 2.5 years including Clonazepam (Ex. 2.0018), Seroquel (Ex. 2.0056), Librium (Ex. 2.0121), Lorazepam (Ex. 2.0154), and Ativan (Ex. 2.0172). The Claimant has taken Zoloft to combat depression (Ex. 2.0015).

12. On August 11, 2008 psychiatrist [REDACTED], M.D. certified that the Claimant suffered from a chronic mental illness for purposes of DPA's Chronic and Acute Medical Assistance Program (CAMA) (Ex. 2.0044).

13. A *Preliminary Examination for Interim Assistance* (Form AD#2) prepared by clinical neuropsychologist [REDACTED], Ph.D. dated December 2, 2008 (Exs. 2.0023 – 2.0024 and 2.0225 – 2.0226) states that the Claimant's diagnosis is "PTSD [post-traumatic stress disorder], Bipolar Disorder – most current episode is severely depressed and anxious, and polysubstance abuse / alcohol dependence – continuous;" states that the Claimant is not expected to recover from these conditions in less than twelve (12) months; and further states that the Claimant's "conditions of Bipolar Disorder and PTSD are considered permanent and/or chronic" and that "with therapy her symptoms are expected to decrease and become better managed"

14. A progress note by psychiatrist [REDACTED], M.D. dated March 2, 2009 (Exs. 2.0017 – 2.0018) states in relevant part as follows:

. . . . [The Claimant] has a severe alcohol problem, but is attempting to get into recovery She has a history of traumas and now is paranoid about the way "people" treat her or try to force her into things. She is afraid to go to certain parts of town. She feels very anxious and says she has had full blown panic attacks about twice this week. She feels like she is about to jump out of her skin, or climb the walls.

* * * * *

Diagnosis – Alcohol dependence. I suspect that there are underlying mental disorders such as PTSD and possibly Bipolar Disorder I think a sustained period of abstinence will be necessary to clarify the diagnosis.

* * * * *

15. A progress note by psychiatrist [REDACTED], M.D. dated March 23, 2009 (Exs. 2.0015 – 2.0016) states in relevant part that the Claimant’s diagnosis on that date was “Alcohol Dependence. Possible PTSD and Bipolar Disorder (she needs a sustained period of sobriety to establish the diagnosis).”

16. A progress note by psychiatrist [REDACTED], M.D. dated May 4, 2009 (Ex. 2.0014) states in relevant part that the Claimant’s diagnosis on that date was “Alcohol Dependence. Her primary presentation today is anxiety: rule out generalized anxiety, panic disorder, anxiety NOS, or PTSD.”

17. A *Preliminary Examination for Interim Assistance* (Form AD#2) prepared by psychiatrist [REDACTED], M.D. dated May 4, 2009 (Exs. 2.0003 – 2.0004) states that the Claimant’s diagnosis is “PTSD 309.81, Anxiety NOS and Alcohol Dependence (303.90), rule out Bipolar mood disorder;” and further states that the Claimant is not expected to recover from these conditions in less than twelve (12) months “or if so, only partially.”

18. A progress note by psychiatrist [REDACTED], M.D. dated June 22, 2009 (Ex. 2.0012) states that on that date the Claimant’s diagnosis was “303.90 Alcohol Dependence; 296.90 Mood Disorder NOS”.

19. A behavioral health treatment note by [REDACTED], ANP, Ph.D. dated July 23, 2009 (Ex. 2.0053) states in relevant part as follows:

[The Claimant] presents on an urgent care basis wanting medication. She . . . complains of a high level of anxiety . . . difficulty [sleeping], irritability, and inability to focus or concentrate. Denies panic attacks at present, but did have them several months ago. Currently rates anxiety as 9/10. History of depression and SI since childhood. She has tried Zoloft (caused severe anger) and Paxil (felt “high”). History of continuous alcohol abuse. Reports that she drinks to get rid of anxiety Several past suicide attempts – the last was several months ago No evidence of hallucinations [or] delusions There is no doubt that her anxiety level is currently high, but her past history of substance abuse and uncertain follow-up makes the choice of medications limited

20. A Treatment Plan Review by [REDACTED], Ph.D. dated July 27, 2009 (Ex. 2.0006) diagnosed the Claimant as suffering from “Alcohol Dependence, episodic (303.92), Bipolar Disorder, Depressed (296.63), and PTSD (309.81).”

21. A letter from board-certified psychiatrist [REDACTED], M.D. dated December 18, 2009 (Claimant’s Ex. A) stated in relevant part that the Claimant had “been getting mental health services from our clinic since July 2009;” that Dr. [REDACTED] had been “working with [the Claimant] since October 2009;” and that it was her (Dr. [REDACTED]’s) “opinion that [the Claimant] meets criteria for [PTSD].”

22. The Claimant currently sees Dr. [REDACTED] for mental health issues and takes two different medications for anxiety and depression (Claimant testimony). Dr. [REDACTED] is still in the process of fine-tuning her medications for optimal mood stabilization. *Id.* The Claimant believes she will need to continue taking her mental health medications for the rest of her life. *Id.*

III. Physical Impairments.

23. The Claimant also asserted one physical (non-psychological) impairment (Claimant testimony). This could best be described as degenerative joint disease (DJD) of the knees, categorized under SSA Impairment Listing No. 1.01.

24. There is medical evidence that the Claimant has had some amount of degenerative joint disease (DJD) of the left knee since at least October 18, 2007 (Exs. 2.0082, 2.0204).

25. A radiologist's report dated November 13, 2007 (Ex. 2.0139) states in relevant part that the Claimant's "bones demonstrate degenerative changes of the thoracic spine."

26. A radiologist's report on the Claimant's left knee dated June 5, 2008 (Exs. 2.0175 - 2.0176) states that "there is moderate medial and patellofemoral compartment narrowing with associated spurring consistent with osteoarthritis," but that "no fracture, dislocation or effusion is seen."

27. In a treatment note dated June 11, 2008 (Ex. 2.0111) Dr. [REDACTED], M.D. stated that the Claimant "has evidence on her liver function tests as well as her physical exam of an alcohol related hepatitis."

28. A treatment note by Dr. [REDACTED], M.D. dated June 27, 2008 (Ex. 2.0162) states in relevant part that his plan for treatment of the Claimant's knee problem was to "get her a knee brace so she may return to gainful employment." Dr. [REDACTED] has been one of the Claimant's treating physicians since at least September 21, 2007 (Ex. 2.0172).

29. The Claimant testified that her knees began to affect her ability to perform physical work approximately 2 years ago while she was working at a restaurant (Claimant testimony). Since then her left shin bone "clicks like it wants to pop out." *Id.*

30. The Claimant testified that she has trouble walking more than about one city block at a time (Claimant testimony). She also testified that she has difficulty with stairs and walking down hills. *Id.* She testified that she has trouble bending. *Id.* She testified that she can only stand for about 30 minutes at a time. *Id.* She testified that, if she sits for more than about 30 minutes at a time it is then difficult for her to get back up. *Id.* She testified that she can lift 10 pounds on an occasional basis, but would not be able to do that continuously all day. *Id.*

IV. Procedural Facts.

31. The Claimant applied to the United States Social Security Administration (SSA) for Supplemental Security Income (SSI) "a couple of years ago" (Claimant testimony). Her application was initially denied and is currently in appeal status with the Social Security Administration. *Id.*

32. The Claimant applied to DPA for Interim Assistance on July 17, 2009 (Ex. 1).

33. An internal DPA communication by DPA Medical Reviewer [REDACTED] (RN, BSN, MPA) dated July 29, 2009 (Ex. 2.0047) states in relevant part as follows:

The [Claimant] is claiming disability based on alcohol dependence and mood disorder. Substance abuse was ruled out of the criteria in 1999 and to qualify she has to prove that her mood disorder is independent of the substance abuse. Alcohol is a depressant. The [medical records] do not contain information substantiating a long history of mental illness with subsequent hospitalizations which meets the requirements We do not even have a psychiatric evaluation.

34. A DPA Interim Assistance Medical Review Denial Form prepared by DPA Medical Reviewer [REDACTED] dated August 21, 2009 (Ex. 2.0046) states in relevant part as follows:

This is the 4th review for [the Claimant]. Denied based on the medical evidence which did not substantiate the client's allegation that she was unable to engage in any and all types of work activities due to anxiety [and] alcohol dependence Review of the [Claimant's medical records] disclosed a consistent record of inebriation from alcohol. Consequently, it is impossible to tell if [the Claimant's] alcohol is responsible for or contributes to her mental illness. Therefore she does not meet the criteria

35. On August 25, 2009 DPA mailed to the Claimant a notice (Ex. 3) which stated in relevant part as follows:

Your application for Interim Assistance is denied At this time you were found not to meet the medical eligibility requirements for Interim Assistance.³

36. A DPA Interim Assistance Medical Review Denial Form prepared by DPA Medical Reviewer [REDACTED] dated September 22, 2009 (Ex. 2.0002) states in relevant part as follows:

This is the 4th review for [the Claimant] who has presented new [medical records]. We reviewed the provider's notes which disclosed the [Claimant] continued to abuse alcohol The notes list alcohol abuse as her first diagnosis. While it is possible that the [Claimant] has genuine mental illness, it is impossible to discern if the client has a substance abuse induced mental illness. Alcohol is a known depressant and as of 1999 substance abuse does not meet the criteria, unless it can be proven that the mental illness is the causative factor and that the disorder is not induced by the substance abuse and the [Claimant's] non-compliance with treatment recommendations. The Client does not appear to be psychotic. Consequently, it is likely that the client could engage in non-stressful work activities requiring simple routine repetitive tasks.

³ The notice also stated that the Claimant's application was being denied because of the then-current status of her application to the U.S. Social Security Administration (SSA) for Supplemental Security Income (SSI or disability benefits). However, the Division subsequently abandoned this as a basis for its denial, and the Claimant testified at the hearing that her SSI application was on administrative appeal before the SSA.

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 proof⁴ by a preponderance of the evidence.⁵

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 (SSA) to approve their Supplemental Security Income (SSI) 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.

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.”

The Social Security Administration’s SSI disability analysis involves a sequential multistep evaluation. *Briscoe ex rel. Taylor v. Barnhart*, 425 F.3d 345, 351-52 (7th Cir. 2005). This evaluation considers (1) whether the claimant is presently engaged in substantial gainful activity; (2) whether the claimant has a severe impairment or combination of impairments (the duration of the impairment is an aspect of this severity requirement); (3) whether the claimant's impairment meets or equals any impairment listed in the regulations as being so severe as to preclude substantial gainful activity; (4) whether the claimant's residual functional capacity leaves him unable to perform his past relevant work; and (5) whether the claimant is unable to perform any other work existing in significant numbers in the national economy. 20 C.F.R. §§ 404.1520, 416.920. A finding of disability requires an affirmative answer at either step three or step five, above.

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

⁴ “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).

⁵ 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, 5th Edition, 1979).

regulations, it is necessary to proceed to the next step of the disability analysis and determine whether the Claimant has a severe impairment.

Severity of Physical Impairments.

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) 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. Acceptable medical sources include licensed physicians and psychologists. 20 C.F.R. § 404.1513(a). The claimant's own statement of symptoms alone will not suffice. 20 C.F.R. § 416.908.

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.

Severity of Mental Impairments.

The Social Security disability regulations apply different criteria to cases involving mental impairments, as explained below. These criteria are set forth in 20 CFR §§ 404.1520(a) and 416.920(a), which are essentially identical. 20 CFR 404.1520a provides in relevant part as follows:

* * * * *

(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;⁶

⁶ The Social Security Regulations (20 CFR, Part 404, Subpart P, Appendix 1, Section 12.00(C)(1)) define “activities of daily living” as including “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.”

social functioning;⁷ concentration, persistence, or pace;⁸ and episodes of decompensation.⁹ 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 [a] 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).

* * * * *

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 analysis and determine whether the Claimant’s impairment meets the 12 month durational requirement (and subsequent requirements).¹⁰

⁷ The Social Security Regulations (20 CFR, Part 404, Subpart P, Appendix 1, Section 12.00(C)(2)) define “social functioning” in relevant part as the “capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals.”

⁸ The Social Security Regulations (20 CFR, Part 404, Subpart P, Appendix 1, Section 12.00(C)(3)) define “concentration, persistence, or pace” in relevant part as “the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings”

⁹ The Social Security Regulations (20 CFR, Part 404, Subpart P, Appendix 1, Section 12.00(C)(4)) define “episodes of decompensation” in relevant part as “exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning,” including “hospitalizations, placement in a halfway house, or a highly structured and directing household”

¹⁰ In this case it is not necessary to discuss the remaining steps in the disability analysis because the Claimant has been found to be not disabled at step 2 of the analysis (i.e. the Claimant’s impairments are not severe). Otherwise, the subsequent steps in the analysis would require a determination of (1) whether the claimant’s severe impairment has 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 (20 CFR 416.909; 20 CFR 416.920(a)(4)(ii)); (2) whether the claimant’s impairment meets or equals the criteria set forth in the Social Security Administration’s Listing of Impairments (20 CFR Part 404, Subpart P, Appendix 1; 20 CFR 416.920(a)(4)(iii)); (3) whether the claimant can perform her prior work (20 CFR 416.920(a)(4)(iv)); and (if not) (4) whether the claimant can perform any other work (20 CFR 404.1545(a)(5)(ii); 20 CFR 416.920(a)(4)(v)).

Special Rules Applicable In Cases Involving Drug and Alcohol Addiction.

A review of the medical documentation in this case shows that the Claimant suffers from alcohol addiction in addition to her other impairments. The Social Security Administration (SSA) has promulgated regulations to address the situation where (as here) some portion of a claimant's impairment results from alcohol addiction. The federal courts have issued decisions explaining how these regulations are to be applied.

In cases involving drug or alcohol addiction, the hearing officer must *first* determine whether the claimant is disabled using the standard five-step approach (described at pages 8-9, above). *Viers v. Astrue*, 582 F.Supp.2d 1109 (N.D. Iowa 2008). The five-step analysis is applied *without deducting or segregating out any effects that might be due to substance abuse. Id.*

If the hearing officer determines that the addicted claimant is disabled, the hearing officer must next consider whether the Claimant would still be disabled if the effects of the substance abuse *were absent*. *Viers v. Astrue*, 582 F.Supp.2d 1109 (N.D. Iowa 2008). The issue at this point is the level of impairment that would remain *if the substance abuse ceased*, and whether those remaining impairments are disabling. *Id.*

The hearing officer may then only deny benefits if the claimant's drug addiction or alcoholism is a contributing factor material to the determination of the claimant's disability. 20 C.F.R. § 416.935. A drug or alcohol addiction is a contributing factor if the claimant's remaining limitations would *not* be disabling in the absence of drugs or alcohol. *Id.* If, however, the claimant's other (i.e. non-drug or alcohol-related) limitations would still be disabling by themselves, the claimant must be found to be disabled regardless of his or her drug addiction or alcoholism. *Id.*, *see also Grogan v. Barnhart*, 399 F.3d 1257 (10th Cir. 2005).

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.

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. 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).

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 Mental Impairments.

The Claimant’s psychological impairment may fairly be characterized as consisting of depression and bipolar disorder (both categorized under Social Security Administration (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). At this stage of the disability analysis, the Claimant has the burden of proving, by a preponderance of the evidence, that her mental impairments constitute “severe impairments” as defined by 20 CFR §§ 404.1520(a) and 416.920(a) (discussed below). The two regulations are essentially identical.

20 CFR 404.1520a provides in relevant part as follows:

* * * * *

(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).

* * * * *

Pursuant to these regulations, the Claimant’s limitations are assessed with regard to the following areas: (1) activities of daily living; (2) social functioning; (3) concentration, persistence, or pace); and (4) episodes of decompensation. These four areas are discussed separately below.

1. Activities of Daily Living.¹¹

The Claimant testified that she sometimes finds it difficult to leave the house because of her panic attacks and associated anxiety (Claimant testimony). When she does leave the house, she sometimes has panic attacks while walking down the street and while shopping at stores. *Id.* When she has an attack while shopping she sometimes must abandon her shopping cart or basket and leave the store. *Id.* However, there is no evidence in the record that the Claimant has difficulty performing activities of daily living other than shopping. Accordingly, the degree of limitation on the Claimant’s ability to perform her activities of daily living must be characterized as “mild” (2 on a scale of 1-5; a rating of “1” would indicate no limitation whatsoever).

2. Social Functioning.¹²

The Claimant testified that she is sometimes paranoid, has a fear of people, and therefore has difficulties dealing with the public (Claimant testimony). She also testified that she sometimes has anger management problems or rages. *Id.* The Claimant’s testimony in this regard is supported by the medical evidence. See, for example, the progress note by psychiatrist [REDACTED], M.D. dated March 2, 2009 (Exs. 2.0017 – 2.0018). This evidence supports a finding that the Claimant’s social functioning is moderately impaired (3 on a scale of 1-5).

3. Concentration, Persistence, or Pace.¹³

The Claimant testified that she has problems maintaining her concentration or focus. This was documented in a behavioral health treatment note by [REDACTED], ANP, Ph.D. dated July 23, 2009 (Ex. 2.0053). However, the Claimant did not testify that this lack of focus affected her ability to perform her

¹¹ See SSA definition of “activities of daily living” in Principles of Law at page 9, above.

¹² See SSA definition of “social functioning” in Principles of Law at page 9, above.

¹³ See SSA definition of “concentration, persistence or pace” in Principles of Law at page 9, above.

previous work in any way. Rather, the Claimant asserted that she was unable to perform her prior restaurant and deck hand work only because the work was too physically demanding for her injured knee. Accordingly, the degree of limitation on the Claimant's concentration, persistence, or pace must be characterized as no more than "mild" (2 on a scale of 1-5).

4. Episodes of Decompensation. ¹⁴

The Claimant testified that she has periods when she just cannot cope with life, feels suicidal, and withdraws from all outside contact (Claimant testimony). She testified that she had these periods 3-4 times during the month prior to the hearing. *Id.* However, the Claimant's medical records do not indicate that the Claimant ever had a true episode of decompensation. 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 "mildly impaired" (2 out of 5) with regard to the "activities of daily living" category.
2. The Claimant scored "moderately impaired" (3 out of 5) with regard to the "social functioning" category.
3. The Claimant scored "mildly impaired" (2 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 "mildly impaired," and where the Claimant has scored at or above "moderate" in only one category, the Claimant's mental impairments cannot be rated "severe" pursuant to 20 CFR 416.920(c).

In summary, the Claimant did not carry her burden of proof and failed to prove, by a preponderance of the evidence, that her mental impairments (i.e. depression or bipolar disorder (both categorized under Social Security Administration (SSA) Impairment Listing No. 12.04), and/or her anxiety, panic disorder, and/or post traumatic stress disorder (PTSD) (all three categorized under 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 by these impairments according to

¹⁴ See SSA definition of "episodes of decompensation" in Principles of Law at page 9, above.

the Social Security Administration's disability regulations, the requirements of which are incorporated by reference into the State of Alaska's Interim Assistance regulations.

B. The Claimant's Physical Impairments.

The next step is to determine whether one of the Claimant's physical impairments is medically severe pursuant to 20 CFR 416.920(c). A "severe impairment" is one that "significantly limits [a person's] . . . ability to do basic work activities."¹⁵ 20 CFR §§ 404.1520(c) and 416.920(c).

The Claimant's medical records indicate some degree of physical impairment with regard to her left knee, thoracic spine, and liver (see Findings of Fact at paragraphs 24 – 28, above). However, the only physical impairment asserted by the Claimant as a basis of disability pertains to her left knee (Claimant testimony). Accordingly, this analysis is limited to a discussion of the degree of impairment of the Claimant's left knee.

The Claimant testified that she has trouble walking more than about one city block at a time; that she has difficulty with stairs and walking down hills; that she has trouble bending; that she can only stand for about 30 minutes at a time; that if she sits for more than about 30 minutes at a time it is then difficult for her to get back up; and that she can lift 10 pounds on an occasional basis, but would not be able to do that continuously all day. If the sole criteria were the Claimant's testimony, she would clearly qualify as severely impaired pursuant to 20 CFR 416.920(c) and 20 CFR 416.921(b).

However, for purposes of a disability determination, a claimant's own statement of symptoms, by itself, will not suffice. 20 C.F.R. § 416.908. Evidence from acceptable medical sources is necessary to establish the severity of an impairment. 20 C.F.R. § 404.1513(a); see also 20 CFR 416.908.

There is medical evidence that the Claimant has had degenerative joint disease (DJD) of the left knee since at least October 18, 2007 (Exs. 2.0082, 2.0204). However, the radiologist's report on the Claimant's left knee dated June 5, 2008 (Exs. 2.0175 - 2.0176) states that "there is *moderate* medial and patellofemoral compartment narrowing with associated spurring consistent with osteoarthritis," but that "no fracture, dislocation or effusion is seen" (emphasis added). Further, Dr. ██████'s treatment note dated June 27, 2008 (Ex. 2.0162) states in relevant part that his plan for treatment of the Claimant's knee problem was to "get her a knee brace so she may return to gainful employment."

In summary, the Claimant's medical records do not indicate that the Claimant's physical impairment (i.e. degenerative joint disease (DJD) of the left knee) significantly limits her ability to perform basic work activities as defined by 20 CFR 416.920(c) and 20 CFR 416.921(b). Accordingly, the Claimant did not carry her burden of proof and failed to prove, by a preponderance of the evidence, that her

¹⁵ 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.

degenerative joint disease (DJD) of the left knee (categorized under SSA Impairment Listing No. 1.01) constitutes a “severe impairment” as defined by 20 CFR §§ 404.1520(c) and 416.920(c). The Claimant is therefore not disabled by this impairment 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.

Because the Claimant has been found not to be disabled at this step of the analysis, it is not necessary 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 discussion in Principles of Law at pages 10 - 12, above.

Finally, because the Claimant has been found not to be disabled at this step of the analysis, it is not necessary to determine whether the Claimant’s alcohol addiction materially contributes to the degree of impairment suffered by the Claimant. See discussion in Principles of Law at pages 10-12, above.

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 carry her burden and did not prove, by a preponderance of the evidence, that her mental impairments (consisting of depression and/or bipolar disorder (categorized under Social Security Administration (SSA) Impairment Listing No. 12.04); and/or her anxiety, panic disorder, and/or post traumatic stress disorder (PTSD) (categorized under SSA Impairment Listing No. 12.06)); or her physical impairment (consisting of degenerative joint disease (DJD) of the left knee (categorized under SSA Impairment Listing No. 1.01)), constitute “severe impairments” as defined by 20 CFR §§ 404.1520(c), 416.920(c), and 416.921(b).
3. Because the Claimant’s mental and physical 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 on August 25, 2009 it denied the Claimant’s application for Interim Assistance benefits submitted on or about July 17, 2009.

DECISION

The Division was correct when on August 25, 2009 it denied the Claimant’s application for Interim Assistance benefits submitted on or about July 17, 2009.

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 [29th] day of January, 2010.

Jay Durych
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this [29th] day of January 2010 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, DPA
, Chief of Field Services, DPA
, Policy & Program Development
, Staff Development & Training
, Administrative Assistant II
, Eligibility Technician I
, Fair Hearing Representative

By _____
J. Albert Levitre, Jr.
Law Office Assistant I