

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of                                 )  
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OAH No. 12-0632-APA  
Agency No.

**FAIR HEARING DECISION**

**I. Introduction**

S U applied for Interim Assistance on January 6, 2012.<sup>1</sup> A disability adjudicator employed by the Division of Public Assistance (Agency) concluded that Mr. U’s disabling conditions were not expected to meet the 12-month durational requirement to qualify for the program. The Agency notified Mr. U that his application was denied on April 20, 2012.<sup>2</sup> He requested a hearing.

Mr. U’s hearing was held on June 12, 2012. He represented himself and testified on his own behalf. T U, his wife, testified on his behalf. Jeff Miller, Public Assistance Analyst with the Agency, represented the Agency. Laura Ladner, the Agency’s disability adjudicator/medical reviewer, testified on behalf of the Agency. The hearing was recorded.

This decision concludes that Mr. U is severely physically and mentally impaired and that these impairments meet the 12-month durational requirements. While his physical impairment does not meet or equal the Social Security disability listings, his mental impairment does. As a result, Mr. U satisfies the Interim Assistance program’s eligibility requirement that he be “likely to be found disabled by the Social Security Administration.”<sup>3</sup> The Agency’s decision denying his Interim Assistance application is REVERSED.

**II. Facts**

Mr. U’s application was supported by a January 4, 2012 “Preliminary Examination for Interim Assistance” form which was completed by Michael Mraz, M.D. That form stated his diagnoses were cervical disk herniation and radiculopathy. The form further stated that he was not expected to recover from these conditions within six months, and that he required “neck surgery ASAP.”<sup>4</sup> Laura Ladner, the Agency’s medical reviewer, determined that Mr. U’s application should be denied because his

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<sup>1</sup> Ex. 1.  
<sup>2</sup> Ex. 4.  
<sup>3</sup> See 7 AAC 40.180(b)(1).  
<sup>4</sup> Ex. 3.76.

physical and mental conditions were expected to improve as a result of his recent surgery “within the next 12 months.”<sup>5</sup> The Agency then denied his application on March 16, 2012.<sup>6</sup>

Mr. U had surgery for his cervical disc herniation in January 2012, soon after he applied for Interim Assistance. He continues to experience degenerative disc disease. He also experiences chronic depression, along with several other mental health conditions. The Agency agreed that he experienced severe mental and physical impairments.<sup>7</sup> At hearing, the Agency also agreed that his physical impairment met the 12 month durational requirement.<sup>8</sup>

Mr. U is homeless. During the current summer, he has been living in a tent on a friend’s land. He rides his bicycle approximately five miles every three days to a place where he can take a shower.<sup>9</sup>

Mr. U has been separated from his wife for several years. She picks him up for church once a week. She does his laundry. She helps him with food. He also gets his food from a church food bank. She keeps track of and makes sure that he gets to his medical appointments, because he was missing them, or showing up for them at the wrong dates and times. Without her assistance, he would not be able to obtain food, make it to his medical appointments, or take care of himself.<sup>10</sup>

Mr. U has a substantial psychiatric history. It includes multiple psychiatric hospitalizations, the last of which occurred in 2001.<sup>11</sup> His medical records in the file date back to November 1, 2010.<sup>12</sup> They mention his depression starting on April 27, 2011, and specifically note that he was “seen at API many times” and refer him for neuropsychological testing.<sup>13</sup>

Mr. U underwent a neuropsychological evaluation on June 2, 2011. The evaluation diagnosed him with recurrent major depressive disorder, posttraumatic stress disorder, somatoform disorder (code 300.82),<sup>14</sup> and also contained provisional diagnoses of mild cognitive disorder and learning disorder.<sup>15</sup> The evaluation found he had “a long history of prior diagnosis of depressive/bipolar disorder,” that his symptoms of pain and cognitive impairment were “likely greatly exacerbated by somatoform

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<sup>5</sup> Ex. 3.1.

<sup>6</sup> Ex. 3.

<sup>7</sup> Ms. Ladner testimony.

<sup>8</sup> Ms. Ladner testimony.

<sup>9</sup> Mr. U testimony.

<sup>10</sup> Mr. and Ms. U testimony.

<sup>11</sup> Mr. U testimony; Exs. 3.45, 3.62.

<sup>12</sup> Ex. 3.71.

<sup>13</sup> Ex. 3.62.

<sup>14</sup> Somatoform disorder (code 300.82) is where complaints of symptoms are exaggerated, but are “not intentionally produced or feigned.” *Diagnostic and Statistical Manual of Mental Disorders* 490 – 491 (Fourth Edition, Text Revision. Washington, DC, American Psychiatric Association, 2000).

<sup>15</sup> Mr. U was also diagnosed with polysubstance dependence, in apparent remission. Ex. B, pp. 12 - 13.

disorder,” and that he may have antisocial personality traits “if not outright antisocial personality disorder.”<sup>16</sup> His limited medical records do show some relief from his symptoms beginning in August 2011, but consistently contain a depression diagnosis since then.<sup>17</sup> His most current behavioral health assessment, dated February 15, 2012, contains a diagnosis of “Major depression, recurrent.”<sup>18</sup>

Mr. U has difficulty coping with other people. He misunderstands them and gets angry and frustrated. He gets agitated and anxious in the grocery store. When he’s at church, he has to sit to the side, and not in the middle of the congregation. He has very few friends.<sup>19</sup>

Ms. Ladner concluded that while Mr. U had degenerative disc disease, he did not meet or equal the Social Security Administration’s (SSA) disability listing for disorders of the spine. She also examined the Social Security mental health disability listings for mental health impairments. She concluded there was insufficient evidence to demonstrate that he satisfied the requirements for organic mental disorders (listing 12.02), anxiety disorders (listing 12.06), somatoform disorders (listing 12.07), or personality disorders (listing 12.08).<sup>20</sup>

Ms. Ladner also reviewed whether Mr. U met or equaled the SSA listing for affective disorders (listing 12.04), which includes depression. She concluded that he did not for the following reasons:

- a. He satisfied the “A” criteria of the listing.
- b. He also needed to satisfy the “B” criteria, which required him to experience two of the following elements: marked restriction/limitations with his (1) activities of daily living, (2) social functioning, and (3) persistence, pace and concentration, and (4) experience episodes of decompensation. While Mr. U was markedly impaired in his persistence, pace, and concentration, he did not satisfy the “B” criteria because he was only minimally impaired in his activities of daily living, social functioning, and did not have any episodes of decompensation.
- c. He also did not satisfy the 12 month duration requirement because his depression symptoms were intermittent.<sup>21</sup>

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<sup>16</sup> Ex. B, pp. 12 – 13.

<sup>17</sup> Exs. 3.18 – 3.42.

<sup>18</sup> Ex. 3.9.

<sup>19</sup> Mr. and Ms. U testimony.

<sup>20</sup> Ms. Ladner testimony.

<sup>21</sup> Ms. Ladner testimony.

### III. Discussion

#### A. *The Three Step Disability Determination Process*

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”<sup>22</sup> Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income benefits.<sup>23</sup> Once an applicant is approved for federal Supplemental Security Benefits, he or she is then eligible to receive Adult Public Assistance benefits.<sup>24</sup>

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 SSA to approve their Supplemental Security Income application.<sup>25</sup>

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”<sup>26</sup> An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.<sup>27</sup>

The SSA uses a five-step evaluation process in making its disability determinations.<sup>28</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>29</sup>

The Agency uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.<sup>30</sup> The first step looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the applicant is not disabled.<sup>31</sup> If the applicant is not performing “substantial gainful activity,” it is necessary to proceed to step two.

The second step requires the evaluation of the severity and duration of the applicant’s impairment. Medical evidence, which consists of “signs, symptoms, and laboratory findings, not only

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<sup>22</sup> AS 47.25.430.

<sup>23</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>24</sup> 7 AAC 40.030(a); 7 AAC 40.170(a).

<sup>25</sup> 7 AAC 40.170(a) and (b); AS 47.25.455.

<sup>26</sup> 7 AAC 40.180(b)(1).

<sup>27</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>28</sup> 20 C.F.R. § 416.920

<sup>29</sup> 20 C.F.R. § 416.920(a)(4).

<sup>30</sup> See Commissioner’s Decision dated August 20, 2012 in OAH Case No. 12-0688-APA.

<sup>31</sup> 20 C.F.R. § 416.920(a)(4)(i).

[the applicant's] statement of symptoms," is required to establish an applicant's impairment.<sup>32</sup> In order to be considered disabled, the impairment or combination of impairments must be severe<sup>33</sup> and must be expected to result in death or must have lasted or be expected to last at least 12 months.<sup>34</sup> If the impairment is not severe or does not meet the duration requirement, then the applicant is not disabled. If the impairment is severe and meets the duration requirements, then it is necessary to proceed to step three.

The third step requires the evaluation of whether the impairment meets or equals one of the listings adopted by the SSA.<sup>35</sup> If it does, the applicant is disabled<sup>36</sup> and qualifies for Interim Assistance. If the applicant's impairment does not meet or equal one of the SSA listings, the applicant does not qualify for Interim Assistance.<sup>37</sup>

### ***B. Application of the Three Step Process***

The Agency agrees that Mr. U is not currently engaged in substantial gainful activity. This means that he satisfies step one of the three step disability process. The Agency also agrees that his physical impairment and mental impairments, for which he has several diagnoses, are severe. However, the Agency initially denied his application at step two because its medical reviewer found that he did not meet the duration requirement for either impairment. At hearing, the Agency's medical review agreed that he satisfied the duration requirement for his physical impairment, but argued that he did not meet the specific 12 month duration requirement for his mental impairment, specifically his chronic depression.

#### *1. Physical Impairment*

Mr. U's physical impairment consists of degenerative disc disease. The Agency agreed that he satisfied steps one and two of the disability determination process. In order to satisfy step three, Mr. U must meet or equal the SSA medical listings. His degenerative disc disease falls with the specific listing for disorders of the spine (listing 1.04) and in the general SSA medical listing for musculoskeletal conditions (listing 1.00).<sup>38</sup> In order for Mr. U to meet or medically equal the criteria

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<sup>32</sup> 20 C.F.R. § 416.908.

<sup>33</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>34</sup> 20 C.F.R. § 416.920(a)(4)(ii); 20 C.F.R. § 416.909.

<sup>35</sup> See 20 C.F.R.Pt. 404, Subpart P, Appendix 1 (hereafter "Appendix 1).

<sup>36</sup> 20 C.F.R. § 416.920(a)(4)(iii) and (d).

<sup>37</sup> See Commissioner's Decision dated August 20, 2012 in OAH Case No. 12-0688-APA.

<sup>38</sup> See 20 C.F.R. § Pt 404, Subpart P, Appendix 1, §§ 1.00 and .04.

set out in the musculoskeletal listing, he must have “an extreme limitation of the ability to walk” or “an extreme loss of function of both upper extremities.”<sup>39</sup>

There is no medical evidence demonstrating that Mr. U’s ability to walk or use both upper extremities is extremely limited. The evidence shows that he currently rides his bicycle, an activity that requires the use of both his legs and his upper extremities. As a result, Mr. U does not meet or equal the listing for the musculoskeletal category. Because Mr. U does not satisfy step three, he does not qualify for Interim Assistance benefits based upon his physical impairment.

## 2. *Mental Impairment*

Mr. U has a number of mental health diagnoses. The Agency agreed that his mental impairments are severe. His most recent diagnoses from a psychologist date back to June 2, 2011, and include major depression. The Agency’s nurse reviewer reviewed a number of his diagnoses ((organic mental disorder (listing 12.02), anxiety disorder (listing 12.06), somatoform disorder (listing 12.07), and personality disorder (listing 12.08)) and concluded there was not enough medical evidence in the record to show that they satisfied the SSA mental impairment listings.<sup>40</sup> A review of the underlying medical evidence supports her conclusion.<sup>41</sup>

The Agency’s nurse reviewer also concluded that Mr. U’s major depression did not meet the duration requirement. However, an examination of the facts in this case shows that his depression has been going on for a period of time, well in excess of the 12 month durational requirement. For instance, his June 2, 2011 neuropsychological evaluation states that he “has a long history of prior diagnosis of depressive/bipolar disorder.”<sup>42</sup> In addition, his medical records since that time consistently contain a depression diagnosis.<sup>43</sup> Based upon his substantial history of depression, as reflected in his medical records including his June 2, 2011 neuropsychological evaluation, Mr. U satisfies the durational requirement, and satisfies step two of the disability determination process.

In order to satisfy step three of the disability determination process, Mr. U 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,

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<sup>39</sup> 20 C.F.R. § Pt 404, Subpart P, Appendix 1, §§ 1.00(B)(2)(b)(1) and 1.00(B)(2)(c).

<sup>40</sup> Ms. Ladner testimony.

<sup>41</sup> See Ex. B and Ex. 3, pp. 9 – 62.

<sup>42</sup> Ex. B, p. 12.

<sup>43</sup> Exs. 3.9, 3.18 – 3.42.

<sup>44</sup> 20 C.F.R. § 416.920(a)(4)(iii).

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
    - i. Hallucinations, delusions, or paranoid thinking; or
- [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 Agency agreed that Mr. U met the “A” criteria. The Agency also agreed that he was markedly impaired in one of the elements contained in the “B” criteria, being concentration,

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

persistence, or pace. However, the Agency argued that he did not meet the “B” criteria because he was only mildly affected in his activities of daily living and social functioning, and that he had no episodes of decompensation.

The Agency is correct that Mr. U does not have any current episodes of decompensation. However, its arguments regarding his activities of daily living and social functioning are not persuasive. The evidence shows that it is more likely than not that Mr. U is markedly affected in his activities of daily living and social functioning. A “marked” restriction or difficulty exists when there is a serious interference with the “ability to function independently, appropriately, effectively, and on a sustained basis.”<sup>46</sup> He meets this standard as follows:

1. He is markedly restricted in his activities of daily living, as shown by the fact that his wife, from whom he is separated, has to assist him with obtaining food, and keeps track of his medical appointments and gets him to them, activities which he was not able to do by himself. He gets anxious and agitated doing a basic activity of daily living such as going into a grocery store.

2. He is markedly restricted in his social functioning. He has few friends. His wife takes him to church, where he has to sit to the side of the congregation. He has difficulty interacting with other people. He miscommunicates with other people and gets angry and frustrated.

Mr. U is therefore “markedly” affected in three elements 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 elements. Because he satisfies three of the elements, he meets the “B” criteria.

Because Mr. U 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>47</sup>

#### **IV. Conclusion**

Mr. U did not meet his burden of proving that he is likely to be found disabled by the Social Security Administration due to his physical impairment. However, he did meet his burden of proving that he is likely to be found disabled by the Social Security Administration due to his mental

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<sup>46</sup> 20 C.F.R. Pt. 404, Subpart P, Appendix 1, § 12.00(C).

<sup>47</sup> 7 AAC 40.180(b)(1).



impairment. As a result, the Agency's decision to deny his application for Interim Assistance benefits is REVERSED.

DATED this 23<sup>rd</sup> day of August, 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 13<sup>th</sup> day of September, 2012.

By: *Signed* \_\_\_\_\_  
Name: Ree Sailors  
Title: Deputy Commissioner, DHSS

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