

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

In the Matter of)	
)	OAH No. 12-0748-APA
O M)	Division No.
_____)	

DECISION

I. Introduction

O M applied for Interim Assistance on September 11, 2012.¹ A disability adjudicator employed by the Division of Public Assistance (Division) concluded that Mr. M was mentally and physically impaired but that he did not qualify for Interim Assistance. The Division notified Mr. M that his application was denied. He requested a hearing.

Mr. M’s hearing was held on November 2, 2012. Mr. M represented himself and testified on his own behalf. Terri Gagne, Public Assistance Analyst with the Division, represented the Division. Laura Ladner, the Division’s disability adjudicator, testified on behalf of the Division.

The record was left open after the hearing for Mr. M to submit additional medical documentation, and for the Division to provide its written analysis of those documents.

Mr. M is severely physically impaired and mentally impaired and his impairments meet the 12-month durational requirements. However, his physical and mental impairments do not meet or equal the applicable Social Security disability listings. As a result, Mr. M does not satisfy the Interim Assistance program’s eligibility requirement that he would be “likely to be found disabled by the Social Security Administration.”² The Division’s decision denying his Interim Assistance application is **AFFIRMED**.

II. Facts

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

Mr. M is 31 years old.³ He has a tenth grade education and his recent work history consists of relatively unskilled employment, such as a donut fryer, produce clerk, kitchen helper, and pizza delivery driver.⁴

¹ Ex. 2.1.
² 7 AAC 40.180(b)(1).
³ Ex. 2.2.
⁴ Exs. 2.16 – 2.18.

Mr. M has mental health diagnoses of Bipolar Disorder Type 1 and personality disorder.⁵ Mr. M's most recent psychiatric hospitalization was for five days in June 2011, when he voluntarily admitted himself.⁶ His most recent psychological evaluation was performed on May 31, 2012. The written evaluation states that his speech was at a normal rate, that he denies hallucinations, had no apparent delusions, and that he was neither suicidal nor homicidal. He had some difficulty concentrating on his exam, and had depressive symptoms, trouble sleeping, anxiety, and anger.⁷ Examination notes from September 14, 2012, indicate that he was frustrated, casually dressed and groomed, participated actively, and his "behavior/posture, eye contact, speech and thought processes/content were normal."⁸ As of September 20, 2012, he was not exhibiting any signs of psychosis or mania.⁹

Mr. M has limited social functioning. He has few friends and church is his only social outlet. He tends to get aggravated with people and forgets things. As a result, his domestic partner does tasks such as grocery shopping.¹⁰

Mr. M has had several surgeries in the past for an injured right shoulder.¹¹ The most current medical imaging studies of his right shoulder in the record are from June 2011, and show evidence of prior surgeries and some minor damage, but no acute injury.¹² He fell and reinjured his right shoulder in late June 2012; he had contusions and abrasions and a substantially decreased range of motion, however his emergency room x-rays did not show any fractures.¹³ Medical exam notes of August 9, 2012 indicate that his shoulder appeared normal, but there was pain in the joint and his range of motion was limited.¹⁴ Mr. M continues to have range of motion issues with his right shoulder. He cannot lift his right arm to wash his hair, and cannot pick up his 28 pound son with his right arm. He is right handed. He can use his left hand arm and hand.¹⁵

⁵ Exs. 2.13, 2.22.

⁶ Exs. 18.2 – 18.7.

⁷ Exs. 2.19 – 2.22.

⁸ Ex. 2.30.

⁹ Ex. 2.24.

¹⁰ M testimony.

¹¹ Exs. 2.38, 18.35 -18.38.

¹² Exs. 18.35 – 18.38.

¹³ Exs. 2.36, 2.38.

¹⁴ Ex. 2.32 – 2.33.

¹⁵ M testimony.

Laura Ladner, the Division’s medical reviewer, determined that Mr. M was not likely to meet the Social Security Administration’s (SSA) disability criteria based upon his mental impairments or his right shoulder injury.¹⁶ The Division then denied his application for Interim Assistance.¹⁷

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].”¹⁸ Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income (SSI) benefits.¹⁹ Once an applicant is approved for SSI benefits, he or she is then eligible to receive Adult Public Assistance benefits.²⁰

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 SSI application.²¹

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”²² An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.²³

The SSA uses a five step evaluation process in making its disability determinations.²⁴ 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.²⁵

The Division uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.²⁶ The first step looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the

¹⁶ Ladner testimony; Exs. 2.9 – 2.10. *Also see* the Division’s December 18, 2012 post-hearing statement.

¹⁷ Exs. 8 – 8.1.

¹⁸ AS 47.25.430.

¹⁹ 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the SSI standards are not required to apply for SSI benefits. 7 AAC 40.170(a).

²⁰ 7 AAC 40.030(a); 7 AAC 40.170(a).

²¹ 7 AAC 40.170(a) and (b); AS 47.25.455.

²² 7 AAC 40.180(b)(1).

²³ 2 AAC 64.290(e).

²⁴ 20 C.F.R. § 416.920.

²⁵ 20 C.F.R. § 416.920(a)(4).

²⁶ *In re M. H.*, OAH Case No. 12-0688-APA. (Commissioner of Health and Social Services 2012) <http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf> at 2.

applicant is not disabled.²⁷ 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 [the applicant’s] statement of symptoms,” is required to establish an applicant’s impairment.²⁸ In order to be considered disabled, the impairment or combination of impairments must be severe²⁹ and must be expected to result in death or must have lasted or be expected to last at least 12 months.³⁰ 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 disability listings adopted by the SSA. By regulation, the Division does not use the most current version of the SSA disability listings. Instead, it is required to use the “Social Security Administration disability criteria for the listings of impairments described in 20 C.F.R. 404, Subpart P, Appendix 1, as revised as of April 1, 2005, and adopted by reference.”³¹ If an applicant’s impairment meets or equals one of the applicable SSA disability listings, the applicant is disabled³² 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.³³

B. Application of the Three Step Process

The Division’s decision to deny Mr. M’s application was based upon the review by Laura Ladner, its medical reviewer. The Division agrees that Mr. M 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 impairments and his physical impairment are

²⁷ 20 C.F.R. § 416.920(a)(4)(i).

²⁸ 20 C.F.R. § 416.908.

²⁹ 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).

³⁰ 20 C.F.R. § 416.920(a)(4)(ii); 20 C.F.R. § 416.909.

³¹ 7 AAC 40.180(b)(1)(B). The SSA disability listings are located at 20 C.F.R. Pt. 404, Subpart P, Appendix 1. The version of those listings in effect as of April 1, 2005 is located online at <http://www.gpo.gov/fdsys/pkg/CFR-2005-title20-vol2/pdf/CFR-2005-title20-vol2-part404-subpartP-app1.pdf>

³² 20 C.F.R. § 416.920(a)(4)(iii) and (d).

³³ *In re M. H.*, OAH Case No. 12-0688-APA. (Commissioner of Health and Social Services 2012) <http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf> at 2.

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. M 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.³⁴

1. Mental Impairment

Mr. M has a Bipolar Disorder diagnosis. It falls within the Social Security Medical Listing for Affective Disorders (listing 12.04). For this listing,

[t]he 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:

[omitted]

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

³⁴ 20 CFR § 416.920(a)(4)(iii).

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.^[35]

The Division agrees that Mr. M met the “A” criteria. However, the Division argued that he did not meet the “B” criteria because he did not have repeated episodes of decompensation and was only mildly affected in his activities of daily living, social functioning, and moderately affected in his concentration, persistence, or pace, whereas the “B” criteria require that these activities be markedly affected.³⁶ 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.”³⁷

The Division’s arguments are persuasive regarding the “B” criteria. There is very limited medical evidence regarding Mr. M’s activities of daily living, social functioning, and concentration, persistence, and pace. Medical evidence, not merely an applicant’s statement of symptoms, is required to establish disability.³⁸ Although Mr. M testified that he had few friends, became aggravated easily, and his girlfriend took care of items such as shopping, this is not sufficient, given the limited medical evidence, to establish that he is markedly affected as defined by regulation, in his activities of daily living, social functioning, and concentration, persistence, and pace. He has only had one recent documented episode of decompensation, which occurred when he was psychiatrically hospitalized in June 2011. He therefore does not meet the “B” criteria.

Mr. M also does not satisfy the “C” criteria. In order to satisfy that criteria, he must provide “documented” history showing “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” along with specific other requirements.³⁹ His earliest medical documents in the record that relate to psychiatric care only date back to June 2011, *i.e.*, they do not meet the minimum 2 year requirement.⁴⁰

³⁵ 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.04.

³⁶ Ex. 2.10.

³⁷ 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.00(C).

³⁸ *See* 20 C.F.R. § 416.929(a) and (b).

³⁹ 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.04(C).

⁴⁰ Exs. 18.2 – 18.33.

The Division also noted that Mr. M has a diagnosis of “Personality Disorder, NOS.”⁴¹ In order to meet or equal the listing for a personality disorder, Mr. M would have to satisfy the same “B” criteria as he would for a Bipolar Disorder.⁴² As discussed above, he does not satisfy the “B” criteria.

Mr. M does not meet or equal the SSA listings for mental impairments. This means that he does not qualify for Interim Assistance benefits based upon his mental impairments.

2. *Physical Impairment*

Mr. M’s physical impairment consists of the injury to his right shoulder. This falls within the SSA listing for musculoskeletal impairments (listing 1.01).⁴³

The specific listing for upper extremities, which would include shoulder injuries, requires that there be “[i]nvolvement of one major joint in each upper extremity (*i.e.*, shoulder, elbow or wrist hand), resulting in inability to perform fine and gross movements effectively.”⁴⁴ The evidence in this case shows that only the right upper extremity, specifically the right shoulder, is impaired. In order to meet or equal the listing, both upper extremities must be impaired. Mr. M therefore does not meet or equal the specific listing for musculoskeletal impairments. As a result, he does not satisfy step three of the SSA disability determination process based upon his physical impairment, which means he does not qualify for Interim Assistance benefits based upon his right shoulder injury.

IV. **Conclusion**

Mr. M did not meet his burden of proving that he is likely to be found disabled by the Social Security Administration due to either his mental or his physical impairments. As a result, the Division’s decision to deny his application for Interim Assistance benefits is **AFFIRMED**.

DATED this 8th day of January 2013.

Signed

Lawrence A. Pederson
Administrative Law Judge

⁴¹ See Ex. 2.22.

⁴² 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.08(B).

⁴³ See 20 C.F.R. § Pt. 404, Subpt. P, App. 1, § 1.01.

⁴⁴ 20 C.F.R. § Pt. 404, Subpt. P, App. 1, § 1.02(B).

Adoption

The undersigned, by delegation from 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 23rd day of January, 2013.

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

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