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

In the Matter of )  
 )  
 [REDACTED], ) OHA Case No. 10-FH-190  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Medicaid benefits on April 20, 2010.<sup>1</sup> (Exs. 2. 0 – 2.9) On May 27, 2010, the Division of Public Assistance (Division) sent the Claimant notice his application for Medicaid benefits was denied. (Ex. 6) The Claimant requested a Fair Hearing on June 4, 2010. (Ex. 7.0)

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

The Claimant's hearing was held on September 15, 2010, September 29, 2010, November 10, 2010, and January 20, 2011.<sup>2</sup> The September 15 and September 29, 2010 portions of the hearing were conducted by Hearing Examiner Patricia Huna. The case was subsequently reassigned to Hearing Examiner Larry Pederson, who reviewed the entire record, including the audio recordings, and who conducted all proceedings in this case from November 10, 2010 onward.

The Division was represented at all times by [REDACTED], a Public Assistance Analyst employed by the Division. Ms. [REDACTED] also testified on behalf of the Division. She attended in person for all portions of the hearing. [REDACTED], who is employed by the Alaska Department of Labor and Workforce Development, Disability Determination Services, appeared telephonically on September 15, 2010 and January 20, 2011, and testified on behalf of the Division.

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<sup>1</sup> The date written on the Claimant's application's signature page is December 10, 2009. (Ex. 2.7) However, the application is dated stamped as having been received by the Division of Public Assistance on April 20, 2010. (Ex. 2.0) This Decision will use the date of receipt when referring to the Claimant's application.

<sup>2</sup> The Claimant's family experienced significant medical issues that required repeated hearing postponements.

The Claimant attended the hearing telephonically on September 15, 2010, September 29, 2010 and November 10, 2010. He attended the hearing in person on January 20, 2011. He was represented at all times by his wife, who attended the hearing telephonically on September 15, 2010, September 29, 2010 and November 10, 2010, and attended the hearing in person on January 20, 2011. Both the Claimant and his wife testified on his behalf.

### **ISSUE**

Was the Division correct to deny the Claimant's April 20, 2010 application for Medicaid benefits on May 27, 2010 because he allegedly was not disabled?

### **SUMMARY OF DECISION**

The Claimant is severely mentally impaired. His medically documented psychological impairment, Bipolar syndrome, meets or equals the Social Security disability listings for affective disorders. As a result, he has met his burden of proof and established that he is disabled according to Social Security criteria. The Division was therefore not correct when it denied the Claimant's April 20, 2010 application for Medicaid benefits on May 27, 2010.

### **FINDINGS OF FACT**

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

1. The Claimant is 37 years old (birth date [REDACTED]). (Ex. 2.1) He has completed high school and has one year of college education. *Id.* The Claimant is unemployed. (Ex. 2.2) He applied for Medicaid benefits on April 20, 2010. (Exs. 2.0 – 2.9) His household consists solely of his wife and himself. (Ex. 2.1)
2. The Claimant has mental health diagnoses of Bipolar Type I syndrome and Dependent Personality Disorder. (DDS Ex. 279) He was first diagnosed with Bipolar syndrome in 2007. (DDS Ex. 23)
3. The Claimant's previous work experience has been primarily working in retail stores as a stocker. ([REDACTED] testimony) He earned \$23,000 in calendar year 2008. (DDS<sup>3</sup> Ex. 246) He earned \$18,000 in calendar year 2009. *Id.*
4. The Claimant has a history of suicide attempts/suicidal ideation as follows:
  - a. He was psychiatrically hospitalized in September 2004 after a suicide attempt. (Ex. 108)

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<sup>3</sup> The Division submitted a large number of documents into evidence, which it received from the Alaska Department of Labor and Workforce Development, Disability Determination Services. Those documents are individually numbered. They are collectively referred to as "DDS Ex. \_\_\_" in this Decision.

- b. He was admitted to the [REDACTED] on May 25, 2007 “because of his report of continuing suicidal ideation after he intentionally thrust his face into a door in a fit of anger on 5/20/2007, thereby self-inflicting a broken nose.” (DDS Ex. 311)
- c. He was psychiatrically admitted to [REDACTED] Hospital twice in 2009, September 1 – 13, 2009, and November 15, 2009 – November 23, 2009, each time expressing suicidal ideation. (DDS Ex. 269, 279 – 281)

5. During the Claimant’s most recent hospitalization, November 15 – 23, 2009, he was diagnosed with Bipolar I disorder, “most recent episode depressed, severe without psychotic features,” and Dependent personality disorder. (Ex. 279). He was depressed, had chronic suicidal thoughts, “was obsessive in his thinking,” and had pressured speech. *Id.*

6. The Claimant’s most recent psychological evaluation was conducted on December 21, 2009. (DDS Ex. 39 – 42) That evaluation contains a diagnosis of “Bipolar Disorder, Most Recent Episode Depressed, Severe, with Psychotic Features.” His symptoms included impulsivity, irritability, poor anger control, racing thoughts, talkativeness, hypersexuality, and insomnia. (DDS Ex. 40 - 41)

7. The Claimant is currently taking his medications. (Claimant testimony; Wife testimony). While taking his medications, he, as of the January 20, 2011 hearing, continued to experience suicidal thoughts. (Claimant testimony). In addition, during the month preceding the January 20, 2011 hearing, the Claimant lost control on two occasions, where he hit the walls; the police were called both times. (Claimant testimony; Wife testimony)

8. The Claimant has also become disoriented and lost several times recently while shopping. (Claimant testimony; Wife testimony) These incidents occurred in July 2009; March 2010, and November 2010. *Id.*

9. The Alaska Department of Labor, Disability Determination Services (DDS) reviewed the Claimant’s application and medical records, on behalf of the Division. ([REDACTED] testimony) DDS’s undated review found the following:

- a. The Claimant experiences a Depressive syndrome with “appetite disturbance with change in weight,” “sleep disturbance,” “psychomotor agitation, or retardation,” “decreased energy,” “feelings of guilt or worthlessness,” “difficulty concentrating or thinking,” and “thoughts of suicide.” (DDS Ex. 15)
- b. The Claimant experiences “Manic syndrome characterized by” “pressures of speech,” “decreased need for sleep,” and “easy distractibility.” (DDS Ex. 14)
- c. The Claimant experiences “Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes).” (DDS Ex. 16)

d. The Claimant was mildly limited in his activities of daily living; mildly limited in maintaining his social functioning, mildly limited in maintaining his concentration, persistence or pace, and had experienced one or two “repeated episodes of decompensation, each of extended duration.” (DDS Ex. 21)

10. DDS then concluded, on May 17, 2010, that:

[The Claimant] does have Bipolar I disorder and is currently under medication and therapy with good results. His impairments are severe but not expected to last 12 months with continued therapy and medication.

[The Claimant] is not considered eligible for disability benefits under the Public Assistance program at this time. Disability is therefore denied.

(DDS Ex. 1)

11. The Division denied the Claimant’s application for Medicaid benefits on May 27, 2010 based upon DDS’s May 17, 2010 conclusion the Claimant was not disabled. (Ex. 6.0)

### **PRINCIPLES OF LAW**

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). “Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the [triers of fact] that the asserted facts are probably true.” *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003) (quoting from *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964)).

The Alaska Medicaid program provides medical assistance to qualified applicants. In order for an individual to receive Medicaid benefits, they must qualify financially and also fall within a specified eligibility category. Those eligibility categories are listed in Alaska regulation 7 AAC 100.002. The only eligibility category for a male, who is (a) under the age of 65, (b) does not have minor children in the household, (c) and does not receive federal Supplemental Security Income benefits, requires that he satisfy Alaska Adult Public Assistance requirements. 7 AAC 100.102(d)(1), 7 AAC 100.400(a), and 7 AAC 100.410(b). The Adult Public Assistance eligibility requirements, in their turn, require that the applicant “meet the definition of disability contained in Title XVI of the Social Security Act, as amended (42 U.S.C. 1382c(a)(3)).” 7 AAC 40.170(c).

The Code of Federal Regulations (CFR) contain the specific rules detailing whether an applicant is disabled as defined by Title XVI of the Social Security Act. Those regulations set out a very specific multistep process that must be followed in order to determine whether someone is disabled:

1. Is the applicant performing substantial gainful employment as defined by the applicable Social Security regulations? If so, the applicant is not disabled. 20 CFR 416.920(a)(4)(i). If the applicant is not performing substantial gainful employment, then the applicant must satisfy the next question.
2. Is the applicant's impairment severe? A severe impairment is one that "significantly limits [a person's] physical or mental ability to do basic work activities." 20 CFR 416.920(c). Medical evidence is required to establish an applicant's impairment. 20 CFR 416.908. If an applicant has multiple impairments, the combined effect of all the impairments must be considered in determining whether an applicant is severely impaired. 20 CFR 416.923. If the impairment is not severe, the applicant is not disabled. 20 CFR 416.920(a)(4)(ii). If an applicant is severely impaired, then the applicant must satisfy the next question.
3. Has the applicant's severe impairment lasted for a continuous period of at least 12 months, or can it be expected to last for a continuous period of at least twelve months? 20 CFR 416.909. If the severe impairment does not satisfy this duration requirement, the applicant is not disabled. 20 CFR 416.920(a)(4)(ii). If the severe impairment satisfies this duration requirement, the applicant must satisfy the next question.
4. Does the applicant's severe impairment meet or medically equal the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1? If it does, the applicant is disabled and no further inquiry is required. 20 CFR 416.920(a)(4)(iii). If the severe impairment does not meet or medically equal the listing of impairments, then the applicant must satisfy the next question.
5. Does the applicant's severe impairment prevent him from doing his previous relevant work? This involves an evaluation of the applicant's residual functional capacity. If the applicant is not prevented from performing his previous relevant work, the applicant is not disabled. 20 CFR 416.920(a)(4)(iv). Otherwise, the applicant must satisfy the next question.
6. Is the applicant capable of performing other work? Answering this question requires the application of the Social Security medical vocational guidelines that include the evaluation of the applicant's residual functional capacity, age, education, English literacy, and previous work experience. If the applicant is not capable of performing other work, he is disabled. 20 CFR 416.920(a)(4)(v).

### **ANALYSIS**

The issue in this case is whether the Division was correct to deny the Claimant's April 20, 2010 application for Medicaid benefits on May 27, 2010 because he allegedly is not disabled. Because this case involves an application for benefits, the Claimant has the burden of proof by a preponderance of the evidence.

In order to resolve this case, it is necessary to review the evidence and decide, using the multistep Social Security disability analysis, if the Claimant's impairments satisfy the Social Security disability criteria. If they do, the Claimant is disabled by Social Security standards and therefore eligible for the Medicaid benefits which he applied for on April 20, 2010. If the Claimant's impairments do not satisfy the Social Security disability criteria, the Claimant is not disabled by Social Security standards and not eligible for Medicaid benefits.

The Claimant has a mental health diagnosis of Bipolar syndrome, which he was first diagnosed with in 2007. *See* Finding of Fact 4 above.

A. Current Employment.

The Claimant is not employed. *See* Finding of Fact 1. He therefore satisfies the first step of the Social Security disability analysis, i.e. he is not engaged in substantial gainful activity. It is therefore necessary to proceed to the next step, and determine if he is severely impaired.

B. Severe Impairment.

The Division agrees that the Claimant is severely impaired by his Bipolar syndrome. *See* Finding of Fact 10 above. He therefore satisfies the second step of the Social Security disability analysis. It is therefore necessary to proceed to the next step, and determine if he satisfies the durational requirement.

C. Duration.

The Division denied the Claimant's Medicaid application on durational grounds. The denial was based on the conclusion reached by the Alaska Department of Labor Disability Determination Services on May 17, 2010 as follows:

[The Claimant] does have Bipolar I disorder and is currently under medication and therapy with good results. His impairments are severe but not expected to last 12 months with continued therapy and medication.

[The Claimant] is not considered eligible for disability benefits under the Public Assistance program at this time. Disability is therefore denied.

(DDS Ex. 1)

The evidence in the record shows the Claimant was diagnosed with Bipolar syndrome in 2007, when he was hospitalized in [REDACTED] due to having suicidal thoughts after he deliberately injured himself. He was subsequently hospitalized twice in 2009, once in September and again in November, again due to having suicidal thoughts. His mental health problems were therefore ongoing for several years before his April 20, 2010 Medicaid application. In fact, he was hospitalized due to a suicide attempt in 2004. This shows a sustained occurrence of his mental health problems over a number of years.

The Division's denial, however, ignores the fact that the applicable Social Security regulation bases duration not only on whether an applicant's severe impairment is *expected to last* longer than 12 months, but also upon whether the severe impairment *has lasted* longer than 12 months. 20 CFR 416.909. As shown above, the Claimant's mental health problems have been ongoing for a number of years. As a result, because his severe mental impairment has lasted for a period of longer than 12 months, he satisfies the durational requirement.

The Division was therefore not correct to deny the Claimant's April 20, 2010 Medicaid application on the grounds his severe impairment was not expected to last 12 months. However, this is not dispositive of this case. It is still necessary to proceed to the next step in the Social Security disability analysis and determine if his severe mental impairment meets or medically equals the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1.

#### D. Meeting or Equaling the Social Security Impairment Listings.

The Claimant's severe mental impairment consists of his Bipolar syndrome. The Social Security system classifies this condition under the general category of mental impairments, 20 CFR Pt 404, Subpart P, Appendix 1, § 12.01 *et. seq.* The specific listing for Bipolar syndrome is located at affective disorders, 20 CFR Pt 404, Subpart P, Appendix 1, § 12.04. Subsection A of 20 CFR Pt 404, Subpart P, Appendix 1, § 12.04 requires, for Bipolar syndrome to be present, that the Claimant experience "Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)."

The DDS reviewer found that the Claimant satisfied the test for Bipolar syndrome.<sup>4</sup> *See* Finding of Fact 9(c) above. However, in order to meet or equal the mental impairment affective disorder listings, in addition to satisfying the test for Bipolar syndrome, the Claimant's severe mental impairment must also result in two of the following four factors that demonstrate the Claimant is functionally limited:

- a. Marked limitations in his activities of daily living;
- b. Marked limitations in maintaining social functioning;
- c. Marked limitations in maintaining concentration, persistence or pace; or
- d. Repeated episodes of decompensation, each of extended duration.

Subsection B of 20 CFR Pt 404, Subpart P, Appendix 1, § 12.04.

A "marked limitation" exists when there is a serious interference with the ability to function. 20 CFR Pt 404, Subpart P, Appendix 1, § 12.00(C). "Decompensation" consists of "exacerbations or temporary

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<sup>4</sup> In fact, the DDS reviewer found that the Claimant not only satisfied the test for Bipolar syndrome but also presented sufficient symptoms to satisfy the tests for both depressive disorder and manic syndrome. *See* Finding of Fact 9(a) – (b) above.

increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence or pace.” 20 CFR Pt 404, Subpart P, Appendix 1, § 12.00(C)(4). “Repeated episodes” of decompensation means three episodes within 1 year, each lasting for at least two weeks. *Id.* However, more frequent shorter episodes may also fulfill this requirement. *Id.*

The DDS reviewer found the Claimant was only mildly limited in his activities of daily living, social functioning, and maintaining concentration, persistence or pace. *See* Finding of Fact 9 above. The DDS reviewer also found that the Claimant only had one or two instances of decompensation. *Id.*

The Social Security disability regulations require that a Claimant must meet the threshold level of a marked limitation/episodes of decompensation for two of the four limitation factors (daily living, social functioning, concentration, persistence or pace, and decompensation) in order to meet or equal the Social Security listings for mental impairments/affective disorders. Subsection B of 20 CFR Pt 404, Subpart P, Appendix 1, § 12.04.

A review of the evidence in this case shows that the Claimant meets this initial threshold. The DDS reviewer found that the Claimant experienced the following symptoms: “appetite disturbance with change in weight,” “sleep disturbance,” “psychomotor agitation, or retardation,” “decreased energy,” “feelings of guilt or worthlessness,” “difficulty concentrating or thinking,” “thoughts of suicide,” “pressures of speech,” “decreased need for sleep,” and “easy distractibility. *See* Finding of Fact 9(a) and (b) above. In addition, the Claimant’s most recent psychological evaluation (Dec 21, 2009) found the Claimant’s symptoms included impulsivity, irritability, poor anger control, racing thoughts, talkativeness, hypersexuality, and insomnia. *See* Finding of Fact 6 above.

All of the symptoms discussed above impact the Claimant’s ability to conduct activities of daily living, and to function socially. In addition, the Claimant’s having become disoriented and lost on several occasions while shopping, and having lost control and hitting the walls in his home – resulting in the police being called, affects his activities of daily living and social functioning. *See* Findings of Fact 7 and 8 above. The cumulative effect of the Claimant’s symptoms and behavior seriously interfere with his ability to conduct activities of daily living and to function socially, i.e. his activities of daily living and social functioning are markedly limited. Because the Claimant is markedly limited in his activities of daily living and his social functioning, he meets the minimum requirement that he satisfy two of the four limitation factors contained in Subsection B of 20 CFR Pt 404, Subpart P, Appendix 1, § 12.04.

In addition, the Claimant’s history shows that he additionally experiences a third limitation factor because of his episodes of decompensation. He has experienced four episodes of decompensation. He was psychiatrically hospitalized twice in 2009, once in September and once in November, which were only a few months before this application was filed in April 2010. *See* Finding of Fact 4 above. Then in January 2011, despite taking his medications, he decompensated twice when he lost control and hit the walls in his home, which resulted in the police being called. *See* Finding of Fact 7 above. While none of these meet the extended duration requirement, of two weeks, the fact that the Claimant’s hospitalizations were spaced so closely together in 2009, along with his two closely spaced together January 2011 incidents of violence (loss of anger control) to such an extent that the police were called, despite taking his medications, demonstrates that he meets the decompensation requirement.



In conclusion, the evidence in this case shows the Claimant's severe mental impairment (Bipolar syndrome) meets or equals the Social Security disability listings for an affective disorder as contained in 20 CFR Pt 404, Subpart P, Appendix 1, § 12.04. First, he experiences the symptoms necessary to qualify for Bipolar syndrome. *See* Subpart A to 20 CFR Pt 404, Subpart P, Appendix 1, § 12.04. Second, his severe mental impairment markedly limits his activities of daily living and social functioning, and he has experienced repeated episodes of decompensation. Because the Claimant has met or equaled the listing, he is disabled according to Social Security rules, and it is not necessary to proceed any further in the disability analysis. 20 CFR 416.920(a)(4)(iii).

The Claimant has therefore proven by a preponderance of the evidence that his severe mental impairment (Bipolar syndrome) meets or equals the Social Security disability listings for an affective disorder. As a result, he is disabled according to Social Security disability criteria. This means he is eligible for Adult Public Assistance as a result of his disability. 7 AAC 40.170(c). Because he is eligible for Adult Public Assistance, he in turn is also eligible for Medicaid benefits. *See* 7 AAC 40.410(b). The Division was therefore not correct when it denied his April 20, 2010 application for Medicaid benefits.

### **CONCLUSIONS OF LAW**

1. The Claimant is not employed. He is therefore not performing substantial gainful activity.
2. The Claimant experiences a severe mental impairment, Bipolar syndrome, which has lasted for 12 months or longer, that qualifies him as severely impaired according to the Social Security disability regulations.
3. The Claimant's severe mental impairment meets or medically equals the Social Security listing for affective disorders contained in 20 CFR Pt 404, Subpart P, Appendix 1, § 12.04.
4. As a result, the Claimant has met his burden of proof and demonstrated, by a preponderance of the evidence, that he is eligible to receive Medicaid benefits because he is disabled according to federal Social Security regulations.
5. The Division was therefore not correct when it denied the Claimant's April 20, 2010 application for Medicaid benefits on May 27, 2010.

### **DECISION**

The Division was not correct when it denied the Claimant's April 20, 2010 application for Medicaid benefits on May 27, 2010.

### **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 18th day of March 2011.

/Signed/

Larry Pederson  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 18th day of March 2011, true and correct copies of the foregoing were sent to:

Claimant by Certified Mail, Return Receipt Requested  
and to other listed persons by e-mail:

[REDACTED], Public Assistance Analyst

[REDACTED], Public Assistance Analyst

[REDACTED], Policy & Program Development

[REDACTED], Staff Development & Training

[REDACTED], Administrative Assistant II

[REDACTED], Eligibility Technician I

/signed/

J. Albert Levitre, Jr.  
Law Office Assistant I